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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 281 (JPO)

5 JOHN COSTANZO, JR.,
6 MANUEL RECIO,

Defendants.

7 -----x

Trial

8 New York, N.Y.
9 October 26, 2023
10 11:10 a.m.

11 Before:

12 HON. J. PAUL OETKEN,

13 District Judge
14 -and a Jury-

15 APPEARANCES

16 DAMIAN WILLIAMS,
17 United States Attorney for the
18 Southern District of New York
19 SEBASTIAN A. SWETT
20 EMILY S. DEININGER
21 MATHEW ANDREWS
22 Assistant United States Attorneys

23 MUKASEY FRENCHMAN LLP
24 Attorneys for Defendant Costanzo
25 MARC L. MUKASEY
MICHAEL F. WESTFAL
STEPHANIE GUABA
TORREY K. YOUNG

GAINOR & DONNER
Attorneys for Defendant Recio
RONALD GAINOR
AMBER E. DONNER

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APPEARANCES (continued)

Also Present: Dean Iannuzzelli, Paralegal Specialist (USAO)
Nerlande Pierre, Paralegal Specialist (USAO)
Marie-Lou Serna, Paralegal (Gainor & Donner)
Sal Chan, Paralegal (Mukasey Frenchman)
Delise Jeffrey, Special Agent, F.B.I.

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1 (Jury of twelve and three alternates impaneled and
2 sworn)

3 THE COURT: Members of the jury, now that you have
4 been sworn in, I will briefly tell you something about your
5 duties as jurors and give you some instructions. At the end of
6 the trial, I will give you more detailed instructions, and
7 those instructions will control your deliberations. It will be
8 your duty to decide from the evidence what the facts are and
9 then apply the law to those facts.

10 In doing so, you must follow the law as I give it to
11 you. You must not take anything I may say or do during the
12 trial as indicating what your verdict should be. Do not be
13 influenced by my taking notes or by my typing something on the
14 computer. What I write down may have nothing to do with this
15 trial or with what you need to be concerned about with the
16 trial.

17 Now, you, the jury, and I, the Court, play different
18 roles in this proceeding. My main duties are to rule on
19 objections, oversee the trial, and at the end of the trial to
20 instruct you on the law that applies. Your duty is to accept
21 those instructions of law and apply them to the facts as you
22 find them.

23 As members of the jury, you are the sole and exclusive
24 judges of the facts. You pass upon the evidence; you determine
25 the credibility of the witnesses; you resolve any conflicts

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1 there may be in the testimony; you draw whatever reasonable
2 inferences that you decide to draw from the facts as you
3 determine them; and you determine the weight of the evidence.

4 To that end, do not conclude from any of my questions
5 or any of my rulings on objections or anything else I do during
6 this trial that I have any view as to the credibility of the
7 witnesses or how you should decide the case. Any opinion I
8 might have regarding the facts is of absolutely no consequence.
9 It is your sworn duty. You have taken your oath as jurors to
10 determine the facts.

11 Just as I have my duties as a judge and you have your
12 duties as jurors, it will be the duty of each lawyer in this
13 case to object when the other side offers testimony or other
14 evidence that the attorney believes is not properly admissible.
15 It will be my job to rule on those objections. Therefore, why
16 an objection was made or how I rule on it is not your business.
17 You should draw no inference from the bare fact that an
18 attorney objects to any evidence. Nor should you draw any
19 inference from the fact that I might sustain or overrule an
20 objection.

21 From time to time the lawyers and I may hold
22 conferences out of your hearing at sidebar, at the bench.
23 These conferences involve procedural and other matters and none
24 of the events relating to these conferences should enter into
25 your deliberations.

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1 To be clear, the personalities and the conduct of
2 counsel in the courtroom are not at issue. If you form any
3 reactions of any kind to any of the lawyers in this case,
4 favorable or unfavorable, whether you approve or disapprove of
5 their behavior as advocates, those reactions should not enter
6 into your deliberations.

7 I have referred to the evidence in the case, and that
8 raises an important question: What is evidence? Evidence
9 consists of the sworn testimony of the witnesses, the exhibits
10 received in evidence, and the stipulations of the parties, that
11 is, the agreements of the parties about certain facts. In
12 determining the facts, you must rely upon your own recollection
13 of the evidence.

14 What, then, is not evidence? The following does not
15 count as evidence: First, any testimony that I strike or
16 exclude is not evidence. Second, any exhibit that was not
17 received in evidence. Third, arguments by lawyers are not
18 evidence. And the reason is simple. Advocates are not
19 witnesses. The opening and closing arguments of each party
20 explain how they want you to analyze and think about the
21 evidence. What the lawyers will say is intended to help you
22 understand the evidence, or the lack of evidence, when you
23 deliberate to reach your verdict. But only the witnesses'
24 answers are to be considered evidence, not the attorneys'
25 questions. Finally, any statements that I may make do not

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1 count as evidence.

2 You will have an opportunity to observe the witnesses.
3 It will be your job to decide how believable, or credible, each
4 witness is in his or her testimony. It is for you, the jury,
5 and you alone—not the lawyers, not the witnesses, and not me
6 as the judge—to decide the credibility of witnesses who
7 testify and the weight that that testimony deserves. The
8 ultimate question for you to decide in passing upon credibility
9 is did the witness tell the truth before you in this trial in
10 this courtroom?

11 This is a criminal case. That means that the law
12 presumes each defendant to be innocent of all charges. The
13 government has the burden of proving each defendant's guilt
14 beyond a reasonable doubt. You must determine separately as to
15 each of the two defendants whether the government has proven
16 that defendant's guilt beyond a reasonable doubt.

17 This burden does not shift to the defendants. In
18 other words, the defendants do not have to prove their
19 innocence. Each defendant is presumed to be innocent of the
20 charges in the indictment. The defendants begin the trial with
21 a clean slate. This presumption of innocence alone is
22 sufficient to acquit each defendant unless you, as jurors, are
23 unanimously convinced beyond a reasonable doubt of that
24 defendant's guilt after a careful and impartial consideration
25 of all of the evidence in the case. That presumption is

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1 removed if and only if you, as members of the jury, are
2 ultimately satisfied that the government has sustained its
3 burden of proving each defendant's guilt beyond a reasonable
4 doubt.

5 I also just want to caution you about certain
6 principles governing your conduct as jurors.

7 First, you may not talk to each other about this case
8 or about anyone who has anything to do with the case until the
9 end of the trial when I send the jury to the jury room to
10 deliberate. I will instruct you at that time that you are free
11 to begin deliberating as a jury.

12 Second, you may not talk with anyone else about this
13 case or with anyone who has anything to do with it until the
14 trial has ended and you have been discharged as jurors. Anyone
15 else includes members of your family and your friends. You may
16 tell them that you are a juror in a criminal case, but please
17 do not tell them anything else about it until after you have
18 been discharged by me.

19 Third, do not let anyone talk to you about the case or
20 about anyone having anything to do with it. If someone tries
21 to talk to you, please report it to me immediately through
22 Mr. Hampton or a court security officer. This includes the
23 lawyers and the witnesses in the case. So if you do happen to
24 run into one of the lawyers or witnesses in the hallway or in
25 the elevator, please do not speak to them. And if they don't

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1 speak to you, it doesn't mean they are being rude, it is
2 because I am telling them not to speak to you either while the
3 trial is going on.

4 Fourth, you may not do any research or investigation
5 about the case on your own. Do not read any news stories or
6 articles about the case or anyone who has anything to do with
7 it. You may not use Google or the Internet or any other source
8 to research any aspect of the case or any of the people
9 involved.

10 Also do not go to visit any scenes described during
11 the trial, and that's because the case must be decided based
12 only on the evidence that is admitted during the trial. The
13 parties have a right to that, and it's your duty to follow that
14 instruction.

15 Also, please do not use any social media or discuss
16 the trial or any of the people involved during the trial. That
17 means no Facebook or Twitter or Snapchat or any other social
18 media sites and no blogging about the case. The parties are
19 entitled to have you personally render a verdict in this case
20 on the basis of your independent evaluation of the evidence
21 presented here in this trial. Speaking to others about the
22 case, including even your family, before you deliberate or
23 exposing yourself to evidence outside the courtroom would
24 compromise your service and the fairness to the parties.

25 Finally, I'm just going to give you a brief summary of

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Opening - Mr. Andrews

1 the stages of the trial. First, each party may make an opening
2 statement, though they are not required to. An opening
3 statement is not evidence. It is an outline of what that party
4 intends to prove and it is offered to help you follow the
5 evidence.

6 Next, the government will present witnesses and the
7 defendants may cross-examine them. The defendants are not
8 required to present any witnesses or evidence but may do so if
9 they wish.

10 After that, the attorneys will make their closing
11 arguments or summations to summarize and give you their
12 interpretation of the evidence. As with opening statements,
13 the closing arguments are not evidence.

14 After the closing summations, I will give you
15 instructions on the law and then you will retire to the jury
16 room to deliberate on your verdict. Please do not make up your
17 mind about what the verdict should be until after I have
18 instructed you on the law at the end of the case and you have
19 gone to the jury room and you and your fellow jurors have
20 discussed the evidence.

21 Keep an open mind. The parties deserve, and the law
22 requires, that you give them an opportunity to be heard.

23 We will now have the opening statements, beginning
24 with the government's opening statement. Mr. Andrews.

25 MR. ANDREWS: Thank you, your Honor.

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Opening - Mr. Andrews

1 Good morning.

2 JURORS: Good morning.

3 MR. ANDREWS: John Costanzo was making money in 2019.
4 He fixed up his Porsche, bought a new apartment, and was flying
5 around the country first class. But the source of Costanzo's
6 new found wealth was rotten. John Costanzo, a special agent
7 with the Drug Enforcement Administration, or DEA, was selling
8 the DEA's secrets.

9 For nearly a year, John Costanzo—this man—sold
10 confidential, inside information about the DEA's criminal
11 investigations—investigations into narcotics traffickers,
12 cartel members, money launderers, and murderers. And this man,
13 Manuel Recio, paid Costanzo tens of thousands of dollars for
14 the DEA's secrets, confidential information like who the DEA
15 was investigating for federal crimes, who the DEA was seeking
16 to charge, and when the DEA was planning to make arrests.

17 Recio took Costanzo's inside information and then fed
18 it to defense attorneys, attorneys who represented the targets
19 of the DEA's criminal investigations, attorneys who paid Recio
20 handsomely for the DEA's secrets.

21 Recio and Costanzo put people at risk. They put
22 investigations at risk, all to make a buck. That's why we are
23 here.

24 So what will the evidence show? The evidence will
25 show that Recio didn't always work for defense attorneys.

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Opening - Mr. Andrews

1 Instead, Recio and Costanzo used to work together at the DEA.
2 Recio was a senior supervisor and Costanzo reported to him.

3 But then, in 2018, Recio and Costanzo hatched a plan.
4 Recio would leave the DEA and Costanzo would introduce him to
5 defense attorneys. But not just any defense attorneys;
6 attorneys who Costanzo was buddies with. Recio would go work
7 for those attorneys and they would pay Recio handsomely for his
8 services.

9 And that's exactly what Recio did. Recio quit the
10 DEA, started his own company, and began working as a private
11 investigator for the other side, attorneys who represented the
12 criminal targets of the DEA's investigations. And Recio knew
13 exactly how to get these attorneys valuable information because
14 Recio knew who would sell the DEA's secrets for cold, hard
15 cash—Recio's friend and former colleague, Special Agent John
16 Costanzo.

17 So what kind of inside information did Costanzo sell
18 to Recio? Costanzo sold Recio confidential information about
19 who the DEA was investigating for federal crimes, who the DEA
20 was seeking to charge, and when the DEA was planning to make
21 arrests.

22 The DEA prohibits agents from sharing this
23 information. It puts people at risk. It puts investigations
24 at risk. You are going to learn how, after Costanzo tipped off
25 Recio about when a Dominican drug lord would be arrested, the

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Opening - Mr. Andrews

1 drug lord fled. But Recio and Costanzo kept on with their
2 schemes.

3 And how did Recio pay Costanzo for the DEA secrets?
4 Well, Recio couldn't just wire the money into Costanzo's
5 personal bank account. I mean, the DEA might notice. But
6 Recio and Costanzo were experts at investigating how criminals
7 moved their money, and they put their expertise to use by
8 disguising the bribe payments.

9 Over the course of a year, Recio paid tens of
10 thousands of dollars to companies owned by Costanzo's father
11 and one of Costanzo's friends, a police officer that Costanzo
12 had recruited to work with him at the DEA. Costanzo and Recio
13 then created fake invoices, claiming that these payments were
14 for things like investments and investigative services. And
15 Costanzo hid the money by failing to report a single dollar of
16 this bribe money on his tax returns.

17 And Recio and Costanzo, they didn't stop there,
18 because they also hid their communications. They texted using
19 encrypted, unbreakable messaging applications. They deleted
20 messages. They used a secret phone, one given by Recio to
21 Costanzo and that only had one purpose: to call Recio and give
22 him inside information.

23 And Recio and Costanzo, they didn't work alone. They
24 recruited well-connected criminals to assist in the scheme.
25 You are going to hear how Recio approached a man from the

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Opening - Mr. Andrews

1 criminal underworld, a former DEA informant who had worked for
2 cartels and had committed murder. And you are going to learn
3 how Recio asked this former DEA informant to introduce Recio to
4 the targets of the DEA's criminal investigations, men who would
5 pay Recio for Costanzo's inside information. But what Recio
6 didn't realize was that this former informant—this man that
7 Recio had attempted to recruit—was a cooperating witness. He
8 was working for the government, and he was recording Recio's
9 conversations.

10 And afterwards, when Recio and Costanzo thought they
11 were going to be caught, they lied. Almost a year into the
12 bribery scheme, other law enforcement agents interviewed
13 Costanzo and Recio about what was going on, and they lied.

14 (Continued on next page)

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Opening - Mr. Andrews

1 MR. ANDREWS: They denied that Recio every asked
2 Costanzo for confidential information. They denied that Recio
3 had ever given Costanzo any money. And they denied that Recio
4 had ever given Costanzo a second secret phone, the phone they
5 used only for their dirty business.

6 So then how will the government prove the defendants'
7 guilt beyond a reasonable doubt? You're going to see and hear
8 many different types of evidence at this trial.

9 First, you're going to see and hear Recio and
10 Costanzo's own words plotting the bribery scheme. We're going
11 to show you their emails and their text messages. You're going
12 to see how just two weeks before Recio quit the DEA he stole
13 confidential plans about the DEA's operations abroad,
14 operations run by Costanzo into foreign generals and corrupt
15 politicians.

16 And you're also going to see how Recio texted Costanzo
17 to search the very confidential DEA database again and again
18 and again so that Costanzo could tell Recio confidential
19 information about the DEA's criminal targets, potential clients
20 for Recio and the crooked attorneys that Recio was working
21 with. And you'll also learn how law enforcement secretly
22 recorded Recio and Costanzo's phone calls, calls of Recio and
23 Costanzo speaking when they thought that no one was listening;
24 calls of Recio and Costanzo speaking their true selves.

25 And you're going to hear Recio and Costanzo scheme

NAQVCOS2

Opening - Mr. Andrews

1 with one of the crooked attorneys that they were working with
2 about how they were going to make, in their own words, "money,
3 money, money."

4 And you're going to hear Costanzo tell Recio about
5 what he was going to do to anybody who found out about the
6 bribes; how Costanzo was going to scare the shit out of them.
7 And if they want a problem, I'll make a problem. I'll find
8 people to put problems on them.

9 And you're also going to hear the secret recordings
10 made by the cooperating witness, the former DEA confidential
11 informant that Recio had attempted to recruit into the bribery
12 scheme. You're going to hear Recio tell this cooperating
13 witness on tape how Recio had secret information about when the
14 DEA was going to make charges and arrests. And you're going to
15 hear one of the crooked attorneys that Recio and Costanzo were
16 working with tell this cooperating witness, Don't tell anybody
17 where that information comes from. We don't want people to
18 know.

19 Now, to be clear, this cooperating witness committed
20 crimes, pled guilty, and recorded Recio in the hopes that a
21 judge would sentence him to less time in jail. We are not
22 asking you to approve of this man's crimes. We are asking you
23 to listen to the recordings that he made, Recio's words on tape
24 plotting the bribery scheme. And when you do, you will see how
25 these recordings line up with a mountain of other evidence in

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Opening - Mr. Andrews

1 this case, evidence including the bribes.

2 Because we're going to show you the bank records,
3 showing how Recio paid tens of thousands of dollars to
4 companies owned by Costanzo's father and one of Costanzo's
5 friends. We're going to show you the fake invoices claiming
6 that these payments were for things like investigative services
7 and investments. And we're going to show you Costanzo's tax
8 returns, where he didn't report a single dirty dollar of the
9 money that he was making.

10 And so as you'll learn, over the course of a year,
11 Costanzo sold Recio confidential information and hid his
12 actions from his colleagues, his bosses, and the prosecutors
13 that he worked with. Costanzo and Recio thought they could get
14 away with it, and they were wrong.

15 Now, after you see and hear all of the evidence, I'll
16 have an opportunity to speak with you again. But in the
17 meantime, I'd ask you to do three things:

18 First, please pay careful attention to the evidence.
19 Second, please follow the Court's instructions on the law. And
20 third, use your common sense, the same common sense that guides
21 you throughout your lives outside of this courtroom. And if
22 you do those three things, then at the end of this trial you
23 will have reached the only verdict that is consistent with the
24 evidence in this case: that the defendants John Costanzo and
25 Manuel Recio are guilty.

NAQVCOS2

Opening - Ms. Young

1 THE COURT: Thank you.

2 We'll now have the opening statement on behalf of
3 Mr. Costanzo.

4 Ms. Young.

5 MS. YOUNG: John Costanzo wouldn't be bought, couldn't
6 be bought, and wasn't ever bought. You will see no evidence in
7 this case of payments to John Costanzo for information, because
8 John Costanzo never took one dollar for giving out DEA
9 information.

10 The government's case will show connections that don't
11 exist, patterns where there are none, conclusions without clear
12 evidence. That's why we are here. The government's seeing
13 ghosts, because there was never a *quid pro quo*. John Costanzo
14 never demanded, sought, or received anything of value to
15 violate his official duty as a DEA agent. He never schemed or
16 agreed to scheme to deprive anyone of his honest services, not
17 the DEA, not the public.

18 Let me say it another way: There were no bribes.

19 That's why John pleaded not guilty; that's him saying,
20 There was no scheme. I didn't take or agree to take bribes
21 from anyone. I always acted in good faith. My only intention
22 was to act in the best interest of the DEA and the public. I
23 am innocent.

24 Members of the jury, let me take a second to
25 reintroduce myself. My name is Torrey Young. And together

NAQVCOS2

Opening - Ms. Young

1 with Marc Mukasey and our team, it is our privilege and
2 responsibility to represent DEA Special Agent John Costanzo,
3 Jr.

4 And John, if you could please stand up for a second.
5 This is John. Thank you.

6 John has been a DEA agent for 24 years. His father
7 was a DEA agent for 30 years. The Costanzos have been serving
8 this country since the 1960s.

9 Now, you're going to hear in this case about John's
10 work life and his personal life. I'm going to start with his
11 work life.

12 John actually began his career in the Secret Service.
13 A couple of years later, he moved to DEA and became a special
14 agent in Miami, Florida. And the DEA's mission is to dismantle
15 drug trafficking and money laundering organizations; put them
16 out of business.

17 Now, how does DEA do that? Information, information,
18 and more information. DEA gets information from all sorts of
19 different places. Sometimes it's from private citizens; other
20 times, people who are involved get caught and then, often with
21 lawyers and private investigators helping them, they choose to
22 cooperate. They give DEA agents names, tips, bank account
23 info. They give information to the government. Why?
24 Leniency. They get credit. And DEA gets the information to
25 build more cases, to take down more drug trafficking, to

NAQVCOS2

Opening - Ms. Young

1 advance DEA's mission.

2 And John, John was good at it. He got promoted. He
3 became a supervisor. And he wasn't busy making arrests on the
4 street corner; he was supervising international operations in
5 places like Colombia and Venezuela to take down major drug
6 kingpins.

7 And it was during John's time in DEA that he met
8 Mr. Manuel Recio. They served together in Miami and, for a
9 while, John reported to Manny. And at the end of 2018, Manny
10 Recio retired from DEA and started a second career as a private
11 investigator. That's not uncommon. John's father did that,
12 Manny did that, John thought about that. But John decided to
13 take a promotion and move to DEA headquarters in Washington,
14 D.C. instead.

15 Now, Manny did a bunch of things as a private
16 investigator which Mr. Gainor will tell you about. But one of
17 the things he did as a private investigator was try to convince
18 drug traffickers to cooperate with the DEA. So a lot of the
19 text messages and calls that you are going to see and hear in
20 this trial are between John and Manny, and they are about just
21 that: John and Manny talking about names and info and money.
22 But it is not John trying to help drug traffickers, and he's
23 not trying to help drug traffickers' lawyers. It was just the
24 opposite. John is trying to help the DEA. John is trying to
25 convince drug traffickers to work with the DEA to catch other

NAQVCOS2

Opening - Ms. Young

1 drug traffickers. These are not discussions of a bribe scheme.
2 And John received no money for these discussions.

3 Evidence will show that the money is not coming from
4 where the government says it's coming from. Money is not going
5 to where they say it's going. And the money is not for what
6 the government says it's for.

7 You will see John's good-faith efforts to gather
8 information to the DEA, to follow up on leads, to get people to
9 cooperate. It is John talking to his former boss who he
10 believes might have just left the DEA, but still has the DEA's
11 mission in his head and in his heart. And listen carefully,
12 because that is what John was mostly doing, listening. Know
13 why? Because good agents listen when others talk.

14 Now, a bit about John's personal life.

15 John had friends. He likes sports. He saved up and
16 bought a condo in Miami. He had a car and an on-and-off
17 girlfriend. And he was a social guy who texts and calls and
18 talks and meets up. And did John's work life and personal life
19 sometimes overlap? Of course. Of course they did. They did
20 from the day he was born because his father was a DEA agent.

21 And when you work with people in an intense
22 environment, when you experience something that very few people
23 really experience or understand, and when you work with them
24 day after day, month after month, year after year, you become
25 friends with some of them. You become like brothers with

NAQVCOS2

Opening - Ms. Young

1 others. And you text them and you call them and you hang out
2 with them. You go to dinner with them. You go to a ball game
3 with them. You wonder about the future with them. It is
4 completely natural, completely normal, and completely innocent.

5 So did John go to a Yankee game to hang out with a few
6 friends? Yes. Was it a bribe? Absolutely not. And did John
7 cheat the DEA and the public by buying his condo? Completely
8 absurd. And did John ever compromise the mission of the DEA by
9 flying home for his birthday to visit his friend? That's
10 ludicrous. Because John Costanzo wouldn't be bought, he
11 couldn't be bought, and he wasn't ever bought; not with a
12 Yankee ticket, not with money, not with anything. John never
13 agreed to be in any bribery scheme because there was no bribery
14 scheme, not with Manny Recio or anyone else. There was no *quid*
15 *pro quo*.

16 There will be, though, "one you scratch my back, I'll
17 scratch yours" in this case, one person who acted corruptly,
18 one person who deprived the government of his honest services,
19 and it is not John Costanzo. The guy who feared getting kicked
20 out of the country and threw out lies to see what would stick,
21 the guy who spewed misstatements and misinformation for hopes
22 of a get-out-of-jail-free card, and that guy is the
23 government's star witness. And I submit that you will reject
24 his testimony. Because the government is relying on the
25 unreliable, finding corrupt intent where there is only good

NAQVCOS2

Opening - Ms. Young

1 faith, and assuming payments for promises that were never made.

2 So ladies and gentlemen, as you listen to the
3 evidence, keep in mind that the government may make a point on
4 a Wednesday, and we may counter on a Friday, and we may not
5 even respond to some things at all because it's the
6 government's burden of proof. And we think you're going to see
7 right off the bat that the government is seeing ghosts; drawing
8 connections where there are none.

9 So we ask that you keep an open mind. And as the
10 judge told you this morning, John is presumed innocent. The
11 presumption of innocence means that you have to presume that
12 John is innocent as he sits here right now. John is innocent
13 when you listen to the evidence, and John is innocent when you
14 leave the courtroom to go deliberate.

15 And only if the government can prove each and every
16 element of each and every charge to each and every one of you
17 unanimously beyond a reasonable doubt can that presumption be
18 overcome. And "beyond a reasonable doubt" is the highest
19 standard we have in the law because this is the most serious
20 kind of case we have in the law.

21 So every time you heard a juror say "not guilty," it
22 is because the government couldn't meet its burden. And that's
23 why at the end of this case you're going to see that John
24 Costanzo wouldn't be bought, couldn't be bought, and wasn't
25 ever bought. And that's why we'll ask you to return a verdict

NAQVCOS2

Opening - Mr. Gainor

1 on all counts of not guilty.

2 THE COURT: Thank you.

3 We'll now have the opening for Mr. Recio.

4 Mr. Gainor.

5 MR. GAINOR: Manny Recio didn't bribe, engage in any
6 fraud, or conspire with Special Agent John Costanzo or anyone
7 else, for that matter. He committed no crime. And because of
8 that, he is not guilty of every single count in this
9 indictment.

10 Ladies and gentlemen of the jury, good morning. My
11 name is Ron Gainor. Myself and my partner, Amber Donner, will
12 be representing Manny Recio, a retired drug enforcement agent,
13 and the other defendant in this case.

14 Now, folks, as you are aware from listening to
15 Ms. Young, there is another side to this case. And this is
16 something not only that Ms. Young focused on, but it's
17 something that I will now discuss and amplify.

18 Our side, Manny Recio's side, begins with Manny Recio
19 himself. You're going to hear that Manny Recio became a drug
20 enforcement agent in 1997. For the next two decades, more, 22
21 years, he participated in hundreds of investigations, focusing
22 in on domestic and international drug targets, individuals
23 breaking the law. He became experienced. He became
24 accomplished at identifying not just large-scale money
25 launderers and large-scale narcotics traffickers, but the

NAQVCOS2

Opening - Mr. Gainor

1 people that worked with them at all levels. And he also became
2 an expert at getting people to cooperate, to plead guilty, to
3 further the DEA mission.

4 Manny worked hard over those two-plus decades, and he
5 moved up into the ranks of DEA in Miami.

6 He first started in Phoenix, came back to south
7 Florida, and was a special agent for some time, until he became
8 an ASAC, an Assistant Special Agent in Charge, someone who
9 supervised multiple groups of agents in the office, in his
10 case, over 50 men and women. And his groups, the people under
11 him, became amongst the most successful and respected in DEA,
12 because they did their job day after day, week after week,
13 month after month, and year after year.

14 The evidence will show that after 22 years of being a
15 special agent and a manager, an Assistant Special Agent in
16 Charge, Manny Recio did what a lot of former agents do: Went
17 on the private side of work. Manny retired in 2018, after
18 attaining the retirement age of 50 years old, after
19 accomplishing over 20 years of government service, after
20 getting a salary of over 180,000 a year, the high end of
21 government service, went into the private sector and became a
22 private investigator, working with other criminal defense
23 attorneys, opened up his own company, Global Legal Consulting.

24 But as Ms. Young has told you and as I will again
25 amplify, Manny Recio never got the DEA out of his blood. After

NAQVCOS2

Opening - Mr. Gainor

1 22 years of being a DEA agent, he was still an agent deep down.
2 You will hear that with few exceptions, he worked with defense
3 attorneys and still represented drug defendants. And again,
4 it's something that happens often where law enforcement agents
5 retire and then go into the private sector.

6 But what did Manny do when he went into the private
7 sector? You're going to hear that he continued the DEA mission
8 when he was also trying to work in a private capacity. He
9 tried to identify, work with, and facilitate the guilty pleas
10 of drug targets, the cooperation of drug targets, so they can
11 work with DEA. Manny went from a supervisor in the Drug
12 Enforcement Agency, to working with defendants in a private
13 capacity, getting them to plead guilty, accept responsibility,
14 and cooperation with DEA.

15 This explains much of his contact with John Costanzo,
16 Special Agent Costanzo. As Manny remained an asset to not only
17 Special Agent Costanzo in DEA, as well as other agents, you
18 will hear that Manny Recio worked with other special agents in
19 the Drug Enforcement Agency doing the same thing. Are you
20 interested in this drug target? Can this drug target
21 cooperate? Can he further the DEA mission? If he pleads
22 guilty and cooperates, what can you do? Because he will help
23 your mission; he will help your case.

24 That's the way the war on drugs is fought, between a
25 partnership outside the DEA, with people -- not only

NAQVCOS2

Opening - Mr. Gainor

1 informants, but people who are able to supply, with defense
2 attorneys, drug targets who are willing to plead guilty,
3 cooperate, and then give information on others. That's what
4 Manny developed an expertise in as a DEA agent and as a
5 supervisor, and that's what he continued when he went on the
6 private side as a private investigator.

7 The evidence will also show that Manny Recio was also
8 a friend of John Costanzo. You heard that they worked
9 together; that Manny Recio supervised Special Agent John
10 Costanzo, who was a highly competent and effective DEA agent in
11 his own right. One of the 50, one of the 50 that Manny
12 supervised.

13 And these best friends did have aspirations of the
14 future, perhaps maybe even going into business in the future.
15 You'll hear some of these conversations. But as Ms. Young
16 pointed out, a lot of these conversations will be
17 mischaracterized by the government. The prosecutors' theory is
18 that there was something very different, something sinister.
19 But there will be no credible evidence of corruption, no
20 credible evidence of bribery or fraud. That's their side of
21 the story. That's their side of the case which they have to
22 prove beyond a reasonable doubt, and they won't ever. What you
23 will see from the prosecution is mischaracterizations of
24 conversations, speculation, guesswork, and a reliance on an
25 informant with the motivation to lie and a track record of

NAQVCOS2

1 lying, cheating, and stealing.

2 Ladies and gentlemen, this is a case about a current
3 DEA special agent and a former DEA agent that didn't commit any
4 crime, and instead tried to advance the DEA mission and
5 continue a fight on the war on narcotics that began over two
6 decades ago, when they both started working and Manny became a
7 supervisor. Manny Recio never bribed or conspired to bribe
8 John Costanzo. He never paid a cent for any information that
9 ultimately, ultimately, was designed to advance the DEA
10 mission.

11 Folks, at the conclusion of this case, after you wade
12 through the leaps, the guesswork, and the speculation in the
13 prosecutors' case, after you consider the evidence with an open
14 mind, knowing what the burden of proof is, knowing what the
15 presumption of innocence means, we'll ask that you return a
16 verdict of not guilty, not guilty on all counts, ladies and
17 gentlemen, because as Manny Recio sits here in this courtroom
18 today, he is not guilty. He is truly not guilty. Thank you.

19 THE COURT: Thank you, Mr. Gainor.

20 Members of the jury, you've now heard the opening
21 statements of each of the parties. And we're going to begin
22 with the evidence in the case, beginning with the first
23 witness. We'll break for lunch at 1 o'clock. So I believe
24 we'll be able to begin.

25 First I'm going to pass out notepads in case you would

NAQVCOS2

1 like to use notepads to take your own notes during the evidence
2 in the trial. A couple of things about that: One, don't write
3 on them; just every night we'll be keeping them on the chair
4 where you're sitting. If you want to write your juror number,
5 you can write your juror number, but that's it, on the front:
6 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15. But that's
7 it for now.

8 The notes are for your own recollection; they are not
9 to be shown to other jurors. Some people find that it's
10 helpful to take notes; others don't. It's completely up to
11 you. The fact that someone decides not to take notes doesn't
12 entitle that juror to any less of a voice when you get to
13 deliberations. Again, don't show your notes to each other;
14 they are just for your own recollection, if you choose to take
15 notes.

16 You will be leaving them here in the courtroom every
17 evening until you actually deliberate. When I instruct the
18 jury to deliberate, then you'll be able to take the notes back
19 with you. Also, you will have copies of the exhibits in the
20 jury room, so you don't have to memorize every exhibit that
21 comes up during the trial.

22 Does everybody have a pen and a notepad? Anybody need
23 a pen? Okay. All right.

24 Mr. Swett, is the government ready?

25 MR. SWETT: Yes, your Honor.

NAQVCOS2

Escobar - Direct

1 The government calls Special Agent Daniel Escobar.

2 THE COURT: Yes.

3 Sir, if you'd please come up to the witness stand,
4 which is up here. And I'll ask you to go ahead and have a seat
5 in the witness stand. Pull the mic -- go ahead and have a
6 seat. And pull the mic so it's pretty close like this, about
7 three inches from you.

8 THE WITNESS: Does that work?

9 THE COURT: Yes. And you'll be sworn in by
10 Mr. Hampton.

11 THE WITNESS: Yes, sir.

12 DANIEL ESCOBAR,
13 called as a witness by the Government,
14 having been duly sworn, testified as follows:

15 THE COURT: Mr. Swett.

16 MR. SWETT: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. SWETT:

19 Q. Good afternoon, Special Agent Escobar.

20 A. Good afternoon.

21 Q. Where do you work?

22 A. For the DEA down in Miami.

23 Q. Does that stand for Drug Enforcement Administration?

24 A. Yes, sir.

25 Q. What is your current title?

NAQVCOS2

Escobar - Direct

1 A. I'm an Assistant Special Agent in Charge.

2 Q. Is that title sometimes shortened to ASAC?

3 A. Yes, sir.

4 Q. Okay. And you said you work in Miami?

5 A. Yes, sir.

6 Q. Special Agent Escobar, could you look around the room
7 please. Do you recognize any individuals in the courtroom that
8 you worked with at the DEA?

9 A. Yes, sir.

10 Q. Do you recognize John Costanzo, Jr.?

11 A. Yes, sir.

12 Q. Could you identify where he is and identify him by an
13 article of clothing?

14 A. He's wearing a gray suit.

15 Q. At which table?

16 A. That table right there, sir.

17 Q. Okay.

18 THE COURT: The second table on the right?

19 THE WITNESS: Second table on the right, yes, sir.

20 MR. SWETT: Your Honor, I ask the record to reflect
21 that the witness has identified the defendant John Costanzo.

22 THE COURT: Yes, the record so reflects.

23 Q. Do you recognize anyone else you've worked with at the DEA?

24 A. Yes, sir.

25 Q. Who would that be?

NAQVCOS2

Escobar - Direct

1 A. Manny Recio, standing there in the blue suit.

2 MR. SWETT: Your Honor, we'd ask the record to reflect
3 that Special Agent Escobar has identified Manuel Recio.

4 THE COURT: It so reflects.

5 Q. Now, you said your current title is Assistant Special Agent
6 in Charge?

7 A. Yes, sir.

8 Q. When did you become an ASAC in the Miami field division?

9 A. I got promoted in March of 2019.

10 Q. Who did you replace in that role?

11 A. Manny Recio.

12 Q. When you became an ASAC, did you work with John Costanzo?

13 A. I did.

14 Q. What was your relationship to him at that time?

15 A. He was my group supervisor, so he reported up to me.

16 Q. What, if anything, did you know about Costanzo and Recio
17 discussing DEA cases during the time you supervised Costanzo?

18 A. I didn't know what they did.

19 Q. We're going to come back to that in a minute. I'd like to
20 talk a little bit about your background.

21 A. Sure.

22 Q. When did you join the DEA?

23 A. I joined in 2002.

24 Q. And can you just explain in very general terms what the
25 DEA's mission is?

NAQVCOS2

Escobar - Direct

1 A. Sure. The DEA -- so our job is to enforce the narcotics
2 laws of the United States.

3 Q. And what was your title when you joined the DEA?

4 A. I was a special agent.

5 Q. When you were -- when you became a special agent, did you
6 swear an oath?

7 A. I did.

8 Q. Do you recall the details of that oath?

9 A. Yeah. It's basically to uphold the Constitution of the
10 United States, to enforce the narcotics laws.

11 Q. What was your first assignment when you joined the DEA?

12 A. I was assigned to the high-intensity drug trafficking area
13 down in Miami, Florida.

14 Q. Can you describe the general responsibility -- the general
15 responsibilities of a special agent in the DEA?

16 A. Sure. As a special agent of the Drug Enforcement
17 Administration, we are paired up with local law enforcement and
18 other federal law enforcement agents to target narcotics in
19 either a specific area or internationally. So DEA, we work at
20 an international level for the most part.

21 Q. While you were in Miami, were you ever promoted?

22 A. I was. I was promoted, yes, sir.

23 Q. What was that promotion?

24 A. I was promoted to the group supervisor in West Palm Beach,
25 Florida for approximately a year. I was up there working with

NAQVCOS2

Escobar - Direct

1 the task force group.

2 Q. Okay. I'm going to ask you about some of those terms you
3 just used.

4 A. Yes, sir.

5 Q. Let me start with "task force." What's a task force?

6 A. A task force group is a group of folks that are comprised
7 of state, local, and federal law enforcement targeting a
8 specific narcotic or area.

9 Q. You also used the term "group supervisor," right?

10 A. Yes, sir.

11 Q. In fact, you said that was the position that you were
12 promoted to?

13 A. That was my position, yes.

14 Q. Can you explain the responsibilities of a group supervisor?

15 A. Sure. As a group supervisor in the DEA, we make sure that
16 the operations are run in a safe manner. We kind of guide the
17 operations to make sure that all the policies and procedures
18 are in place that we do everything correctly.

19 Q. When did you become a group supervisor?

20 A. I became a group supervisor in 2010.

21 Q. What training, if any, did you receive when you became a
22 group supervisor?

23 A. I went to Quantico, Virginia for our group supervisor
24 institute, and we learned the basics of management at that
25 point.

NAQVCOS2

Escobar - Direct

1 Q. The basics of what?

2 A. Management.

3 Q. Okay. Can you give some examples of what that included?

4 A. Sure. Like personnel issues, you know, how to deal with --
5 you know, because as a group supervisor, you're not dealing
6 only with the case stuff, but you're dealing with people, how
7 do you deal with the folks if there's issues within the group.
8 You know, a lot of personnel.

9 Q. Did that include ethical issues?

10 A. Yes, sir, ethical issues, yes, sir.

11 Q. So you said you began as a group supervisor in West Palm
12 Beach?

13 A. Yes, sir.

14 Q. How many agents did you supervise in that role?

15 A. I supervised one group comprised about ten folks.

16 Q. Did you ever transfer to work as a group supervisor in a
17 different group?

18 A. Yes. Approximately a year later I was transferred back
19 down to Miami, Florida, and I was the group supervisor for
20 Group 10.

21 Q. What kind of cases was Group 10 doing?

22 A. Group 10 was doing international large-scale money
23 laundering investigations. They were working money laundering
24 and specifically Attorney General-exempted operations, what we
25 call in the DEA AGEOs.

NAQVCOS2

Escobar - Direct

1 Q. Can you explain what an AGEO is?

2 A. Sure. An AGEO is a large-scale money laundering
3 investigation that we receive permission from the U.S. Attorney
4 or the Attorney General of the United States to move money, to
5 launder money from cartel organizations.

6 Q. What's the purpose of allowing DEA agents to move cartel
7 money under the AGEO?

8 A. The goal of the program is to target the large-scale cartel
9 organizations and to infiltrate them through the banking
10 systems.

11 Q. You mentioned that this was something done under the
12 auspices of the Attorney General. Can you just talk about the
13 approval process for an AGEO?

14 A. Sure. So when we apply for these AGEO operations, they go
15 through a rigorous process through the DEA; not only through
16 the DEA's office, but the United States Attorney's office and
17 any office that is involved in it. So they -- as we're moving
18 up the chain, it gets to the Attorney General. So the deputy
19 attorney generals are involved, the Attorney General himself;
20 they give us authorities to move this money.

21 Q. Are there restrictions about what you can and can't do
22 under an AGEO?

23 A. Yes, there's a lot of restrictions.

24 Q. Are there any sensitivities around these kinds of
25 investigations?

NAQVCOS2

Escobar - Direct

1 A. Yes, there could be classified information or other --
2 other things, yes.

3 Q. Okay. How long were you the group supervisor of Group 10?

4 A. I was the group supervisor up until the point that I left
5 for the Bahamas, which was 2014; so for approximately three
6 years.

7 Q. Why did you go to the Bahamas?

8 A. I was -- I was selected to go to the Bahamas as the country
9 attaché of the DEA over there.

10 Q. What does a country attaché do?

11 A. So as a country attaché, I was the lead adviser to the
12 Ambassador of the United States on any narcotics-related issues
13 in the region; and anything that they needed from the DEA I was
14 the main point of contact for the ambassador.

15 Q. What was your next role in the DEA after serving as country
16 attaché?

17 A. My next role was I was -- I had to go to a headquarters
18 position and I went to our Office of Inspections, Office of
19 Professional Responsibility.

20 Q. What does Office of Professional Responsibility do?

21 A. Our OPR, how we refer to it is our internal affairs
22 department for the DEA.

23 Q. So what kind of work were you doing with OPR?

24 A. At that point I was investigating any allegations of
25 misconduct of DEA employees.

NAQVCOS2

Escobar - Direct

1 Q. How long did you work at OPR?

2 A. Approximately two years.

3 Q. What was your next role in the DEA after that?

4 A. My next role was -- where I'm currently sitting now was
5 promoted to the Assistant Special Agent in Charge of Miami.

6 Q. And again, can you remind the jury when you took on your
7 current role?

8 A. Yeah. March of 2019.

9 Q. So as an ASAC, what are your responsibilities?

10 A. So my current responsibilities, I have four groups that I
11 oversee. I make sure that the groups are adhering to our
12 priorities of the DEA that we receive from the administrator.
13 On top of that, I deal with a lot of administrative tasks and
14 personnel issues. We have special agents that I'm in charge
15 of, intel specialists, contractors, different folks that are
16 coming and going. So it's a -- it's a -- there's quite a bit
17 of admin.

18 Q. What kind of cases are these groups that you supervise
19 investigating?

20 A. So my four groups have different cases. We have one group
21 that's working AGEOs, one group that is working midlevel to
22 lower-level narcotics, I have another group that works strictly
23 local-impact cases that we work with our counterparts in the
24 state, and local where we just impact certain regions or
25 certain sections of the city.

NAQVCOS2

Escobar - Direct

1 Q. You mentioned that you previously served as a group
2 supervisor for Group 10 in Miami; correct?

3 A. Yes, sir.

4 Q. Is Group 10 one of the groups that you supervise in your
5 current role as an ASAC?

6 A. Yes, sir.

7 MR. SWETT: Okay. At this point I'd like to show just
8 to the witness what has been marked Government Exhibit 2. We
9 can show it to counsel as well.

10 Q. Do you see an image on your screen?

11 A. No, sir. Yes, sir.

12 Q. How about now? Okay.

13 What does this image show?

14 A. It's a picture of Manuel Recio.

15 Q. And how long have you known Mr. Recio?

16 A. For approximately 20 years.

17 Q. And does this appear to be an accurate depiction of his
18 likeness?

19 A. Yes, sir.

20 MR. SWETT: The government offers Government Exhibit
21 2.

22 THE COURT: Any objection?

23 MR. GAINOR: No objection, your Honor.

24 THE COURT: Government Exhibit 2 is admitted.

25 (Government's Exhibit 2 received in evidence)

NAQVCOS2

Escobar - Direct

1 MR. SWETT: Could we publish that to the jury please.

2 Q. Special Agent Escobar, you said you've known Mr. Recio for
3 many years. Did you ever work with him while he was at the
4 DEA?

5 A. Yes, sir.

6 Q. When was that?

7 A. From when I was in Group 10, he was my immediate
8 supervisor.

9 Q. What was his role at the time?

10 A. He was the Acting Assistant Special Agent in Charge.

11 Q. Okay. And when Mr. Recio was the Acting Assistant Special
12 Agent in Charge, what were your interactions like with him?

13 A. They were daily. I would go to him for -- for -- to brief
14 him up on cases, give him updates on what we were doing. So
15 they were daily interactions.

16 Q. Okay.

17 MR. SWETT: At this point I'd like to show the witness
18 and counsel what has been marked Government Exhibit 1.

19 Q. Do you see the image on the screen?

20 A. Yes, sir.

21 Q. Who is that?

22 A. That's John Costanzo.

23 Q. How long have you known John Costanzo?

24 A. Approximately the same amount of time, about 20 years.

25 Q. Okay. And does this image depict what he looks like?

NAQVCOS2

Escobar - Direct

1 A. Yes, sir.

2 MR. SWETT: The government offers Government Exhibit 1
3 into evidence.

4 MR. MUKASEY: No objection.

5 THE COURT: It's admitted, Government Exhibit 1.

6 (Government's Exhibit 1 received in evidence)

7 MR. SWETT: Can we please publish that to the jury.

8 Q. Now, you said you've known John Costanzo for about 20
9 years; is that right?

10 A. Yes, sir.

11 Q. When did you first begin working directly with John
12 Costanzo?

13 A. My first direct -- it was when I moved back over in March
14 of 2019.

15 Q. Okay. And you had met Costanzo before then?

16 A. Yes, sir.

17 Q. When you moved back to Miami in March of 2019, what was
18 Costanzo's role with the DEA?

19 A. He was a group supervisor.

20 Q. Which group?

21 A. Group 10.

22 Q. Now, that was the group that you were previously group
23 supervisor for; correct?

24 A. Yes.

25 Q. Who replaced you when you left that role?

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Escobar - Direct

1 A. When I left for the Bahamas, John Costanzo replaced me.

2 Q. Okay. And prior to taking over your role as group
3 supervisor of Group 10, where was John Costanzo working?

4 A. Prior to that, John was in the homestead resident office.

5 Q. Can you explain what the homestead resident office is?

6 A. Sure. The homestead resident office is -- it's an office
7 within the Miami field division. It's a little bit south of
8 Miami, the city of Miami proper; so it's an office about 30, 40
9 miles south of Miami.

10 Q. Did Recio and Costanzo work together in the homestead
11 resident office?

12 A. Yes.

13 Q. What was your understanding of the relationship between the
14 two of them?

15 A. I believe they had a good relationship. They worked
16 together for a long time.

17 Q. Okay.

18 MR. SWETT: I'd now like to show to the witness and
19 counsel what has been marked Government Exhibit 5.

20 Q. What does this show?

21 A. That is Eddie Pagan.

22 Q. How do you know Eddie Pagan?

23 A. Eddie Pagan was a task force officer. I'm sorry, yes, a
24 task force officer with the DEA.

25 Q. And does Government Exhibit 5 -- is that a fair

NAQVCOS2

Escobar - Direct

1 representation of what he looks like?

2 A. Yes, sir.

3 MR. SWETT: The government offers Government Exhibit 5
4 into evidence.

5 THE COURT: Admitted.

6 (Government's Exhibit 5 received in evidence)

7 MR. SWETT: Publish it to the jury.

8 Q. Okay. So again, can you explain to the jury who this
9 person is?

10 A. Sure. Eddie Pagan is a task force officer. So in the DEA
11 we work a lot with task force officers or TFOs, as we refer to
12 them. And they're local law enforcement that have -- have been
13 sworn in as special agents with the DEA. So they are, for all
14 intents and purposes, a DEA special agent on loan from their
15 host or parent agency.

16 Q. The parent agency is where they typically work when they
17 are not task force officers?

18 A. Correct.

19 Q. Do you know what the parent agency -- withdrawn.

20 Do you know what Pagan's parent agency was?

21 A. Yes.

22 Q. What was it?

23 A. Coral Gables PD.

24 Q. PD?

25 A. Yeah, police department.

NAQVCOS2

Escobar - Direct

1 Q. Now, you mentioned that Pagan is a task force officer. Is
2 he currently a task force officer?

3 A. He is not.

4 Q. Okay. In the time period when you returned to Miami as an
5 ASAC in 2019, was he a task force officer then?

6 A. He was.

7 Q. Where was he a task force officer?

8 A. He was a task force officer in Group 10.

9 Q. You were previously group supervisor for Group 10; correct?

10 A. Correct.

11 Q. Was Eddie Pagan a task force officer while you were
12 supervising Group 10?

13 A. No.

14 Q. Typically, how are task force officers assigned to specific
15 DEA groups?

16 A. We go out and recruit different officers that would be good
17 for the job. So typically the way we receive task force
18 officers is we go out, whether it's a supervisor, the special
19 agent, we go to the parent agencies, and go to their narcotics
20 squads or to other squads and try to recruit these folks.

21 Q. Okay. And again, who took over as group supervisor for
22 Group 10 after you left?

23 A. Costanzo.

24 Q. From the time you left Miami to go to the Bahamas to the
25 time you returned in March of 2019, what sort of interactions,

NAQVCOS2

Escobar - Direct

1 if any, did you have with John Costanzo?

2 A. Very limited during that time.

3 Q. How about Manuel Recio?

4 A. About the same, very limited.

5 Q. Okay. And when you came back to Miami in March of 2019,
6 how often did you interact with John Costanzo?

7 A. I came back. We worked every day. Every day.

8 Q. And again, what was the relationship between your role as
9 ASAC and his role as group supervisor of Group 10?

10 A. So it was a -- you know, it was a subordinate employee
11 role, right. So he would come to me for guidance or -- or
12 updates on cases. He would tell me what the group was doing
13 and we would go from there.

14 Q. How long did you supervise John Costanzo in Miami?

15 A. For approximately three months.

16 Q. What happened after that?

17 A. So in June of '19, John Costanzo had got transferred up to
18 headquarters, to the -- to our DEA headquarters which is
19 located in Arlington, Virginia.

20 Q. What interactions, if any, did you have with Costanzo after
21 that?

22 A. Once again, very limited. We talked probably directly a
23 few times, but he went to our financial op section, so he would
24 work with my office, but I had limited contact.

25 Q. Now, when you went to Miami in March of 2019, you were

NAQVCOS2

Escobar - Direct

1 replacing Recio; correct?

2 A. Correct.

3 Q. What was your understanding as to why Recio was leaving the
4 role of ASAC in Miami?

5 A. He left because he retired.

6 Q. And did you have an initial understanding as to what, if
7 anything, he would do after his retirement?

8 A. Yes, my understanding was he was going to go work for a
9 bank.

10 Q. Do you remember where you heard that he was going to work
11 for a bank?

12 A. Yeah, Manny told me.

13 Q. And did there come a time when you learned that Manny
14 Recio, in fact, was not working for a bank?

15 A. Yes.

16 Q. What did you learn he was doing?

17 A. I heard he was working with the local defense attorneys as
18 a private investigator.

19 Q. Which defense attorneys?

20 A. Lu Guerra, Dave Macey.

21 Q. What's a private investigator?

22 A. For private investigators, they just do investigations for
23 different organizations or whatever they're working for. So
24 private investigator for a defense attorney will do background
25 investigations or checks for the -- for the defense to help out

NAQVCOS2

Escobar - Direct

1 the cases.

2 Q. Are private investigators part of the Drug Enforcement
3 Administration?

4 A. No.

5 Q. Do they report to the Drug Enforcement Administration?

6 A. No.

7 Q. Would you consider them in partnership with the Drug
8 Enforcement Administration?

9 A. No.

10 Q. What did you do when you learned that Recio was working as
11 a private investigator?

12 A. I asked John Costanzo if he had heard that.

13 Q. Why did you decide to go to John Costanzo and ask him?

14 A. Because they were friends.

15 Q. And this would have been after the time you had taken over
16 as ASAC, right?

17 A. Correct.

18 Q. So sometime after March of 2019?

19 A. Correct.

20 Q. So do you remember what you asked Special Agent Costanzo?

21 A. Yeah. I mean, just in general terms, I had asked him if he
22 had heard what was Manny doing. I had heard he was working for
23 a bank. And he mentioned -- you know, he said something to the
24 effect like Manny is doing his thing.

25 Q. That's what he said, Manny is doing his thing?

NAQVCOS2

Escobar - Direct

1 A. Yeah.

2 Q. Did you ask any more questions after that?

3 A. No, not after that. I kind of left it alone.

4 Q. Why did you decide not to ask any more questions?

5 A. It really didn't concern me.

6 Q. What, if anything, did Special Agent Costanzo tell you
7 about his involvement in Manny Recio's private investigative
8 work?

9 MR. MUKASEY: Objection.

10 THE COURT: Overruled.

11 MR. SWETT: I'll ask the question again.

12 Q. What, if anything, did John Costanzo tell you about his
13 involvement in Manny Recio's private investigative work?

14 A. He didn't tell me anything.

15 Q. What, if anything, did Special Agent Costanzo tell you
16 about his communications with Manny Recio about DEA cases?

17 A. He didn't tell me anything.

18 Q. What, if anything, did Special Agent Costanzo tell you
19 about a secret phone that he would use to communicate with
20 Manny Recio about DEA cases?

21 MR. MUKASEY: Objection.

22 Argumentative. Lacks foundation.

23 THE COURT: Overruled.

24 Q. I'll ask it again.

25 What, if anything, did Special Agent Costanzo tell you

NAQVCOS2

Escobar - Direct

1 about a secret phone that he used to communicate with Manuel
2 Recio about DEA cases?

3 A. He didn't tell me anything.

4 Q. Did you ever authorize Special Agent Costanzo to use a
5 secret method of communication with Manuel Recio about DEA
6 cases?

7 A. No.

8 Q. What, if anything, did Costanzo tell you about steering DEA
9 targets to specific attorneys with Manuel Recio?

10 A. He didn't tell me anything.

11 Q. Did that include Luis Guerra?

12 A. Correct.

13 Q. And that included David Macey?

14 A. Correct.

15 MR. SWETT: All right. At this time, I'd like to read
16 a stipulation that the parties have entered into. This is
17 Government Exhibit S7.

18 Your Honor, would it be okay to show it to the jury or
19 should we wait until I've offered it?

20 THE COURT: If it's stipulated, I'm fine going ahead
21 and showing it, if that's all right with defense counsel.

22 It's coming in anyway, right?

23 MR. MUKASEY: No problem.

24 THE COURT: Okay. Go ahead.

25 MR. SWETT: Okay. Okay. I'm going to read the first

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Escobar - Direct

1 paragraph and then paragraph 1A.

2 It is hereby stipulated and agreed by and between the
3 United States of America, by Damian Williams, United States
4 Attorney for the Southern District of New York, Mathew Andrews,
5 Emily Deininger, and Sheb Swett, Assistant United States
6 Attorneys, of counsel; and John Costanzo, Jr., the defendant,
7 by and through the consent of his attorneys, Marc L. Mukasey,
8 Torrey K. Young, and Stephanie Guaba, Esq.; and Manuel Recio,
9 the defendant, by and through the consent of his attorneys,
10 Amber Donner and Ronald Gainor, Esq., that:

11 One. If called to testify, a representative from the
12 United States District for the Southern District of Florida
13 would state that on February 28th, 2017, a grand jury sitting
14 in the United States District Court for the Southern District
15 of Florida issued an indictment in *United States v. Edison*
16 *Washington Prado Alava, et al*, 17 Crim. 20144, charging the
17 defendants with conspiracy to distribute cocaine.

18 (Continued on next page)

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Naq2Cos3

Escobar - Direct

1 MR. SWETT: I'm going to read the last paragraph on
2 this document, which is on page 4.

3 "It is further stipulated and agreed that this
4 stipulation may be received into evidence at trial."

5 And the government offers Government Exhibit S7 into
6 evidence.

7 MR. MUKASEY: No objection.

8 THE COURT: S7 is admitted.

9 (Government's Exhibit S7 received in evidence)

10 MR. SWETT: Can we go back to paragraph 1A again.

11 BY MR. SWETT:

12 Q. Special Agent Escobar paragraph 1A refers to an indictment.
13 What's an indictment?

14 A. An indictment is a charging document by the United States
15 government charging an individual of a crime.

16 Q. Who is the person named in the indictment referenced in the
17 stipulation?

18 A. Edison Washington Prado Alava.

19 Q. What is the crime charged?

20 A. They are charged with conspiracy to distribute cocaine.

21 Q. Where was the case charged?

22 A. In the Southern District of Florida.

23 MR. SWETT: Your Honor, at this time I would like to
24 read another stipulation. This is Government Exhibit S2, which
25 we can put up on the screen for the jurors. I'm going to start

Naq2Cos3

Escobar - Direct

1 at paragraph 1.

2 "Government Exhibits 301 through 303A are true and
3 correct copies of records maintained by Yahoo, Inc., an e-mail
4 service provider for e-mail account mannyarecio@yahoo.com used
5 by Manuel Recio.

6 "Government Exhibit 303A is an attachment to
7 Government Exhibit 303.

8 "Government Exhibits 310 and 311 are true and correct
9 copies of records maintained by Google, Inc., an e-mail service
10 provider for e-mail account recio@globallegalconsulting.net,
11 used by Manuel Recio.

12 "It is further stipulated and agreed that Government
13 Exhibits 301" -- "302 through 303A, 310, 311, and this
14 stipulation may be admitted in evidence at trial."

15 I believe that 302 is a typo. It should be 301.

16 But, your Honor, the government offers Government
17 Exhibit S2 into evidence.

18 THE COURT: Admitted.

19 (Government's Exhibit S2 received in evidence)

20 MR. SWETT: The government also offers Government
21 Exhibit 310 into evidence.

22 THE COURT: Admitted.

23 (Government's Exhibit 310 received in evidence)

24 MR. SWETT: Can we please publish Government Exhibit
25 310 to the jury.

Naq2Cos3

Escobar - Direct

1 BY MR. SWETT:

2 Q. Special Agent Escobar, what is this?

3 A. An e-mail.

4 Q. And who is the e-mail from?

5 A. The e-mail is from CorrLinks.

6 Q. Who is the e-mail to?

7 A. Recio@globallegalconsulting.

8 Q. What is the date of this e-mail?

9 A. February 27, 2019.

10 Q. What is the time that this e-mail was sent?

11 A. At 2:09 a.m.

12 Q. What is the subject of this e-mail?

13 A. The subject is Prado Alava Edison Washington.

14 Q. And the name in the subject line, how does that relate to
15 the name in the indictment that we just looked at?

16 A. It is the same name that was in the indictment.

17 Q. Would you read the first paragraph of Government Exhibit
18 310.

19 A. "This is a system-generated message informing you that the
20 above-named person is a federal prisoner who seeks to add you
21 to his or her contact list for exchanging electronic messages.
22 There is no message from this prisoner at this time."

23 Q. Okay. And have you ever seen this -- withdrawn.

24 Were you aware of this e-mail at the time it was sent
25 in February of 2019?

Naq2Cos3

Escobar - Direct

1 A. No.

2 Q. All right. At this time I would like to read another
3 stipulation, which we can show to the jury. This is Government
4 Exhibit S8, and I will indulge everyone's patience because this
5 one is quite long. I will start with paragraph 1.

6 "Government Exhibits 320 through 325A, 397, and 1030
7 to 1032 are authentic copies of notes, call logs, and
8 communications extracted from the cell phone assigned call
9 number 786-271-2480, used by John Costanzo ('Costanzo
10 Phone-1'). Within these records:

11 "Government Exhibit 320 is a call log from Costanzo
12 Phone-1 from April 28, 2015 to November 17, 2019.

13 "Government Exhibit 321 contains communications sent
14 via iMessage between Costanzo Phone-1 and the cell phone
15 assigned call number 305-796-7463 used by Manuel Recio (the
16 'Recio Phone') between May 12, 2019 and October 28, 2019.

17 And to the next page.

18 "Government Exhibit 322 contains communications sent
19 via What's App between Costanzo Phone-1 and the Recio Phone
20 between October 27, 2018 and November 17, 2019.

21 "Government Exhibits 323 contains communications sent
22 via Telegram between Costanzo Phone-1 and the Recio Phone
23 between February 19, 2019 and June 3, 2019.

24 "Government Exhibit 324 is a note saved to Costanzo
25 Phone-1 on or about May 26, 2019.

Naq2Cos3

Escobar - Direct

1 "Government Exhibit 324A is an excerpt from the
2 contacts in Costanzo Phone-1.

3 "Government Exhibit 325 contains visual depictions of
4 excerpts of communications sent via TextNow between Costanzo
5 Phone-1 and Jorge Hernandez Villazon between September 27, 2018
6 and May 6, 2019. Government Exhibit 325A contains images of
7 attachments to GX 325.

8 "Government Exhibit 397 contains communications sent
9 via What's App between Costanzo Phone-1 and the cell phone with
10 call number 786-271-1852, used by Luis Guerra (the 'Guerra
11 Phone'). Government Exhibit 397B contains authentic visual
12 depictions of communications excerpted from GX 397.

13 "Government Exhibit 1030 contains communications,
14 images, and attachments sent via What's App between Costanzo
15 Phone-1 and the Macey Phone, between January 28, 2015 and
16 November 14, 2019.

17 "Government Exhibit 1031 contains communications,
18 images, and attachments sent via iMessage between Costanzo
19 Phone-1 and the phone assigned call number 305-490-7027, used
20 by David Macey (the 'Macey Phone'), between November 2, 2018
21 and November 17, 2019.

22 "Government Exhibit 1032 contains communications and
23 attachments sent via iMessage between Costanzo Phone-1 and the
24 cell phone assigned call number 305-218-1251, used by Edwin
25 Pagan III (the 'Pagan Phone') between February 14, 2019 and

Naq2Cos3

Escobar - Direct

1 November 11, 2019.

2 Government Exhibits 317, 319, 326 through 359, 1020,
3 1025, 1026, and 1028 are authentic visual depictions of
4 communications and metadata excerpted from GX 321, GX 322,
5 GX 323, GX 1030, GX 1031, or GX 1032. Government Exhibits
6 325A, GX 325B, GX 330A, GX 333A, GX 333B, GX 335A, GX 335B, GX
7 349A, GX 354A, GX 1020A, GX 1020B, GX 1026A, GX 1026B, GX
8 1026C, and GX 1028A are authentic visual depictions of
9 attachments to the corresponding government exhibits.

10 "2. Government Exhibits 360, 361, 362, 363, 367, 397,
11 1029, and 1034 contain call logs, communications, and documents
12 extracted from the Recio Phone. Within these records:

13 "Government Exhibit 360 is a call log from the Recio
14 Phone from October 9, 2018, to November 17, 2019.

15 "Government Exhibit 361 contains communications sent
16 via iMessage between Costanzo Phone-1 and the Recio Phone
17 between October 9, 2018 and October 28, 2019.

18 "Government Exhibit 362 contains communications sent
19 via Telegram between Costanzo Phone-1 and the Recio Phone
20 between February 19, 2019 and June 3, 2019.

21 "Government Exhibit 363 contains communications sent
22 via What's App between the cell phone with call number
23 786-566-0085 ('Costanzo Phone-2') and the Recio Phone between
24 May 31, 2019 and August 28, 2019.

25 "Government Exhibit 367 is a document saved on the

Naq2Cos3

Escobar - Direct

1 Recio Phone. There is no communication saved on the Recio
2 Phone transmitting the document to the Recio Phone. The
3 metadata for Government Exhibit 367 reflects a file name of
4 'Invoice (No. 421) from EBCO International of Miami_1 PDF' and
5 a date created of November 12, 2018.

6 "Government Exhibit 1029 contains communications and
7 attachments sent via What's App between Costanzo Phone-1 and
8 the Recio Phone between November 27, 2018 and November 17,
9 2019.

10 "Government Exhibit 1034 through 1034C contains
11 communications and attachments sent via What's App between the
12 Recio Phone, Costanzo Phone-1 and the Guerra Phone.

13 "Government Exhibits 318, 364 through 366, and 368
14 through 379, 382 through 396, 397A, 1001 through 1019, 1021
15 through 1024, and 1027 are authentic visual depictions of
16 communications and metadata excerpted from GX 361, GX 362,
17 GX 363, or GX 1029. Government Exhibits 368A, GX 370A,
18 GX 374A, 375A, 385A and GX 385B and GX 395A are authentic
19 visual depictions of attachments to the corresponding
20 government exhibit.

21 Government Exhibit 380 contains authentic visual
22 depictions of communications and metadata from an excerpt of
23 iMessage communications between the Recio Phone and the Macey
24 Phone.

25 Government Exhibit 381 contains authentic visual

Naq2Cos3

Escobar - Direct

1 depictions of communications and metadata from an excerpt of
2 What's App communications between the Recio Phone and the Macey
3 Phone."

4 And now let's go to the last page.

5 "It is further stipulated and agreed that this
6 stipulation may be admitted in evidence at trial."

7 The government offers Government Exhibit S8 into
8 evidence.

9 THE COURT: Admitted.

10 (Government's Exhibit S8 received in evidence)

11 MR. SWETT: The government also offers Government
12 Exhibits 364 and 384 into evidence.

13 THE COURT: Admitted.

14 MR. MUKASEY: No objection.

15 THE COURT: Admitted.

16 (Government's Exhibits 364, 384 received in evidence)

17 BY MR. SWETT:

18 Q. Let's just pull up Government Exhibit 310 again very
19 quickly.

20 Special Agent Escobar, what's the date on this
21 message?

22 A. It is February 27, 2019.

23 Q. What is the name in the subject line?

24 A. Subject line is Prado Alava Edison Washington.

25 Q. Okay. Can we pull up Government Exhibit 364 side by side

Naq2Cos3

Escobar - Direct

1 with this? You can show that to the jury as well. You know
2 what let's just pull up Government Exhibit 364.

3 Do you see, Special Agent Escobar, Government Exhibit
4 364 on the right of the screen?

5 A. I do.

6 Q. Can you read the three lines at the top of that document?

7 A. Sure. It is Telegram chat thread, Manny Recio, 707-911-750
8 (gray), Johnny Costanzo 713-538-845 (green).

9 Q. What is your understanding of Telegram? What is that?

10 A. Telegram is like a What's App. It's a chatting or a
11 texting app.

12 Q. Okay. And what are the dates of the messages on this
13 screen?

14 A. The dates are 2/27, 2019.

15 Q. How does that relate to the date of the e-mail, Government
16 Exhibit 310?

17 A. It is the same date.

18 Q. Did these messages come before or after that e-mail?

19 A. This was at 2 in the morning. This came at, it looks like,
20 8 at night, so it's after the e-mail.

21 Q. Okay. I would like to read these messages. If I will read
22 the green messages, which are the Johnny Costanzo messages, and
23 you can read the gray, does that work?

24 A. Sure, that works.

25 Q. "Papo, what the fuck is going on?"

Naq2Cos3

Escobar - Direct

1 A. "The Tumaco guy is afraid to cooperate and decided against
2 moving forward and Prado doesn't want Dave but wants me."

3 Q. "Wow. Okay. Now I understand. JM for life."

4 Special Agent Escobar, do you know anything about this
5 Prado case?

6 A. No.

7 Q. Okay. And you mentioned earlier the attorneys you
8 understood Mr. Recio was working with, who are those attorneys?

9 A. David Macey and Lui Guerra.

10 Q. At the bottom it says "JM for life." What is Special Agent
11 Costanzo's first name?

12 A. John.

13 Q. What's is Mr. Recio's first name?

14 A. Manny.

15 Q. Okay. Let's take those down and let's pull up Government
16 Exhibit 384.

17 Can you read the top three lines of this document,
18 please?

19 A. Sure. It's Telegram chat thread, Manny Recio 707-911-750
20 (gray). Johnny Costanzo 713-758-845 (green).

21 Q. I think you said 758, but is it actually 578?

22 A. Yes, 578.

23 Q. So this is another Telegram chat thread. Could we read
24 this one as well? And before we do that, what is the date on
25 these messages?

Naq2Cos3

Escobar - Direct

1 A. These are April 25, 2019.

2 Q. So how does that relate to the documents we just looked
3 at?

4 A. This is after that. It's a few months after.

5 Q. Okay. Could we read these? And I'm going to ask you to
6 read the Manny Recio messages in gray and I will read the
7 Johnny Costanzo in green.

8 A. Okay. "I'm recommending Lui to Prado. Fuck Ruben. What
9 do you think? Maybe we can talk to Lui to go 50/50."

10 Q. "Meeting with him *mañana*."

11 Do you know a criminal defense attorney with the first
12 name Ruben?

13 A. Yes.

14 Q. Who would that be?

15 A. Ruben Oliva.

16 Q. Where does he work?

17 A. Miami.

18 Q. And again, who did you hear that Mr. Recio was working
19 with?

20 A. David Macey and Lui Guerra.

21 Q. Okay. Let's just read these one more time. Could you
22 start from the top?

23 A. Yes. "I'm recommending Lui to Prado. Fuck Ruben. What do
24 you think" --

25 MR. MUKASEY: I'm going to object. We just went

Naq2Cos3

Escobar - Direct

1 through this. It's asked and answered.

2 THE COURT: It's okay. You can go through it.

3 A. "Maybe we can talk to Lui to go 50/50."

4 Q. "Meeting with him *mañana*."

5 Okay. We can take that exhibit down.

6 Special Agent Escobar, I want to finish with some
7 questions about your experience working in the DEA.

8 Is it your understanding that the DEA has standards
9 governing the conduct of special agents?

10 A. Yes.

11 Q. Where are those standards memorialized?

12 A. In our personnel management manual.

13 Q. During your time with the DEA, what training, if any, have
14 you received regarding the standards in the personnel manual?

15 A. We receive it when we first come in -- when we go to the
16 academy, we will receive it at Quantico, then we receive it
17 every year with the standards of conduct training.

18 Q. Did you also mention that you became a group supervisor at
19 some point? Did that also touch upon the standards --

20 A. Yes.

21 Q. -- that you are describing?

22 A. Yes, sir.

23 Q. Now, we have talked about private investigators today.

24 During your time both as a regular agent in the DEA and as a
25 supervisor, have you encountered private investigators?

Naq2Cos3

Escobar - Direct

1 A. I have, yeah.

2 Q. And what role, if any, does a private investigator have as
3 part of a law enforcement team?

4 A. So it doesn't have a role with our team. It has a role
5 with the defense.

6 Q. Okay. And the defense is not part of law enforcement,
7 correct?

8 A. Correct.

9 Q. What kind of -- withdrawn.

10 In your experience as an agent, how frequently would
11 you interact with private investigators?

12 A. Very --

13 MR. MUKASEY: Objection, 401, his interactions.

14 THE COURT: Sustained.

15 BY MR. SWETT:

16 Q. Special Agent Escobar, are you familiar with the term
17 NADDIS?

18 A. I am.

19 Q. What is NADDIS?

20 A. NADDIS is our internal DEA data clearinghouse. It's a
21 place where we put case information and target information of
22 subjects that we are investigating.

23 Q. Is it an acronym?

24 A. It is.

25 Q. Do you know what it stands for?

Naq2Cos3

Escobar - Direct

1 A. Narcotics and Dangerous Drugs Indexing System.

2 Q. How would you characterize the information that's contained
3 in NADDIS?

4 A. Law enforcement sensitive.

5 Q. What does law enforcement sensitive mean?

6 A. That only law enforcement personnel or you as prosecutors
7 that we are dealing with, that we are the only ones that can
8 see that information.

9 Q. During your time at the DEA, have you ever conducted
10 searches in NADDIS on behalf of private individuals?

11 MR. MUKASEY: Objection. 401.

12 THE COURT: Overruled.

13 A. So, no.

14 Q. Does that include private investigators?

15 A. Correct.

16 Q. Does that include defense attorneys?

17 A. Correct.

18 Q. Why not?

19 A. Well --

20 MR. MUKASEY: Objection. 401.

21 THE COURT: Overruled.

22 A. Well, we -- if we receive information, we run it, right, we
23 will take information, run it, but we don't disseminate that
24 information back, right. So we will run the information and
25 use it for our investigations, right, so --

Naq2Cos3

Escobar - Direct

1 Q. Let me see. Let me make sure I understand, then. If you
2 receive information that's relevant to an investigation, what
3 might you do to learn more about that investigation?

4 A. Right, so we will run it into NADDIS to see what's in the
5 NADDIS system, if there are other cases related to those folks.
6 If there is somebody else that's been working that group or
7 that person, then we go back and we will communicate with law
8 enforcement to see how we can work the case.

9 Q. Now, during your time in the DEA, have you ever shared the
10 information that you viewed in NADDIS with a private
11 investigator?

12 MR. MUKASEY: Objection. 401.

13 THE COURT: Overruled.

14 A. No.

15 Q. Have you ever shared that information that you saw in
16 NADDIS with a defense attorney?

17 A. No.

18 Q. Why not?

19 A. It's against our policy.

20 Q. Special Agent Escobar, have you ever told a private
21 investigator when the government planned to seek an indictment
22 against a DEA target?

23 A. No.

24 Q. Have you ever told a defense attorney when the government
25 planned to seek an indictment against a DEA target?

Naq2Cos3

Escobar - Direct

1 MR. MUKASEY: Objection about his actions, Judge.

2 THE COURT: Overruled.

3 A. No.

4 Q. Why not?

5 A. It's against our policy.

6 Q. Special Agent Escobar, have you ever told a private
7 investigator when the government planned to arrest an
8 individual?

9 A. No.

10 MR. MUKASEY: Objection.

11 THE COURT: Overruled.

12 Q. Have you ever told a defense attorney when the government
13 planned to arrest an individual?

14 A. No.

15 Q. Why not?

16 A. It's against our policy.

17 MR. SWETT: No further questions.

18 THE COURT: Thank you. It's 12:55. Should we go
19 ahead and break for lunch?

20 MR. MUKASEY: I can do five minutes or we can break.
21 It's up to you. Do you want to take a break? Let's break.

22 THE COURT: Why don't we break because I have to
23 handle another matter in another courtroom at 1:00.

24 So I'm going to give you an hour for lunch, ladies and
25 gentlemen. We will resume promptly at 2:00, so please try to

Naq2Cos3

Escobar - Direct

1 be back five minutes before 2:00.

2 And I just want to remind you that you are not
3 discussing your case.

4 Please leave your notepads closed on your chairs, and
5 we will see you in the courtroom promptly at 2:00.

6 (Continued on next page)

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Naq2Cos3

Escobar - Direct

1 (Jury not present)

2 THE COURT: We will be in recess until 2:00.

3 MR. MUKASEY: Judge, could I raise one quick matter
4 outside the presence of the witness?

5 THE COURT: Sure.

6 MR. MUKASEY: It will take two seconds.

7 (Witness not present)

8 MR. MUKASEY: I don't want to disrupt the pretty
9 amicable working relationship we have had with the government,
10 but during jury selection, we received 3500 material for this
11 witness. That's hard to deal with, right? We don't have a
12 computer system here. We don't have a printer here. If their
13 paralegals are e-mailing our paralegals 3500 material for a
14 witness who is about to get on the stand it's, for all intents
15 and purposes, useless to us.

16 THE COURT: Presumably it's because of a meeting last
17 night or this morning.

18 MR. MUKASEY: Right. But we could have had it, you
19 know, sometime this morning, and it could have been printed out
20 and given to us in court, rather than e-mailed to our paralegal
21 who is reading it on his phone.

22 Look, I know there is last minute stuff all the time,
23 but if we can get it in a form and in a timely way, rather than
24 three minutes before the witness goes on the stand, I would
25 appreciate it.

Naq2Cos3

Escobar - Direct

1 THE COURT: Mr. Swett, would you like to respond.

2 MR. SWETT: We met with him this morning. If we do
3 that again, we are happy to print out copies. But, obviously,
4 the statute requires production after he testifies on direct.
5 So we are trying to be helpful here, but it was generated at
6 8:30 or 8:45 this morning. So I can print out copies.

7 THE COURT: Yeah, if you can print out copies so it
8 doesn't have to go through someone at the office getting it to
9 them, that would be helpful.

10 MR. MUKASEY: Thank you.

11 MR. SWETT: Yes, your Honor.

12 THE COURT: All right. See you at 2:00.

13 (Luncheon recess)
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NAQVCOS4

A F T E R N O O N S E S S I O N

2:10 P.M.

THE COURT: I believe all the jurors are back from lunch. Are you all ready?

MS. DEININGER: We are.

We did have two issues that did come up pertaining to our next witness. I don't know if you wanted to try and briefly address those before bringing the jury in.

The first relates to Government Exhibit 704A. This is one of the ones we emailed about, I think, two days ago. There was an objection to the government's choice of words in the header of a summary chart as being characterizations, as opposed to, appropriately, a summary of information contained in underlying exhibits. That's a summary chart of text messages sent by Recio and David Macey to Costanzo asking to run or look up information for certain names; and then dates that those names are run in NADDIS.

So the question is whether we need to change the word "requestor" in the summary table.

THE COURT: Requestor. I didn't have a chance to look at all the underlying exhibits, but what's the factual basis for using the word "requestor"?

MS. DEININGER: The summary table is based on a compilation of different text messages in which Recio -- primarily Recio texts Costanzo and says something like, Can you

NAQVCOS4

1 look up this person. Can you run this person in NADDIS. And
2 we believe that to be submitting a request to Costanzo, that's
3 the basis for the use of that word.

4 THE COURT: Seems fairly accurate. What's the
5 argument otherwise?

6 MR. MUKASEY: I think it is a terrific chart for
7 summation, but it is not a summary chart under 1006. It is not
8 the place -- or is it 1003? It is not the place for the
9 government's characterization of what the evidence says, does,
10 or suggests.

11 THE COURT: There's no limitation of summary charts to
12 closing that I'm aware of.

13 MR. MUKASEY: No, no. But there is a limitation on
14 summary charts to characterizing and arguing. And if they want
15 to list all the text messages, I don't really have a problem
16 with that.

17 THE COURT: They can't characterize a request as a
18 request?

19 MR. MUKASEY: Yeah, we don't think that they are
20 appropriately characterized as requests. We have our own view
21 of what they are.

22 THE COURT: I think it's fine.

23 Overruled.

24 Anything else?

25 MS. DEININGER: The other issue is that we just

NAQVCOS4

1 received a proposed limiting instruction from Costanzo's
2 counsel that they want to be read in connection with Inspector
3 Miller's testimony, who is expected to be our second witness.
4 It's a proposed limiting instruction as to the principle that
5 basically violations of DEA policies or standards of conduct
6 are not alone a federal crime.

7 We just haven't had any time to consider this or
8 research it and are kind of -- first impression is that this is
9 something that's probably more appropriate for a final jury
10 charge. I'm raising it because it's been proposed by defense
11 counsel. I know they believe it should be given today, and I
12 don't think we are prepared to consent to that instruction.

13 THE COURT: Okay.

14 MR. MUKASEY: Maybe not consent to it, but I think
15 it's appropriate. And I think it's very standard in cases
16 where violations of bank policy, violations of office policy.
17 And in this case, violations of government policy are being
18 testified about to say to the jury, Look, you may hear some
19 testimony that some office policies or institution policies
20 were violated here.

21 THE COURT: Except that this is -- at least some of
22 the charged crimes are defined by the word "duty," right?
23 Official duty.

24 MR. MUKASEY: Correct.

25 THE COURT: Which I would think makes the line of a

NAQVCOS4

1 DEA policy perhaps coterminous with someone's violation of
2 criminal law.

3 MR. MUKASEY: Not their criminal liability. It can't
4 be coterminous.

5 THE COURT: Well, it's not sufficient. But as to the
6 scope of the duty, there are additional things required, of
7 course. But as to the scope of the duty -- I mean, it's true,
8 the mere violation of a DEA policy itself does not establish a
9 crime. That's got to be right.

10 MS. DEININGER: I don't think we dispute that. I just
11 don't think we believe a limiting instruction is necessary on
12 that just because the witness is going to be talking about
13 standards of conduct. I don't think we would object to an
14 appropriate instruction along those lines in the final jury
15 charge.

16 MR. MUKASEY: Judge, can I hand this up to you and see
17 if it meets your approval?

18 THE COURT: Sure.

19 MR. MUKASEY: I understand the government doesn't
20 consent; they don't even want to think about it. The policies
21 to not define the term "duty," I think that's an ultimate
22 question for the jury. But I do think it's appropriate. And
23 it's been my experience that when policies and standards within
24 an institution are the subject of testimony, that the jury
25 understand violating these, whatever you want to call them,

NAQVCOS4

Escobar - Cross

1 duties, policies, standards, customs, is not the equivalent of
2 a criminal law violation.

3 THE COURT: Okay. You can hand that up and I'll take
4 a look while we do the cross. Thank you.

5 All right. Can we bring the jury out.

6 MR. SWETT: And we'll bring the witness in.

7 THE COURT: All right.

8 (Jury present)

9 THE COURT: You may be seated.

10 Welcome back, ladies and gentlemen.

11 The witness Daniel Escobar is on the stand, was sworn
12 in. You remain under oath.

13 Mr. Mukasey, you may begin your cross-examination.

14 MR. MUKASEY: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. MUKASEY:

17 Q. Good afternoon, Special Agent Escobar.

18 A. Good afternoon, sir.

19 Q. During the time that you were an ASAC in Miami and John was
20 the group supervisor of Group 10, that was about 90 days,
21 right?

22 A. Yes, sir.

23 Q. But you had a much longer relationship with John; correct?

24 A. Yes, I've known John for a long time.

25 Q. And you guys had cases that sort of worked together or

NAQVCOS4

Escobar - Cross

1 worked in the same circles?

2 A. Yes.

3 Q. And you did AGEO cases, is that right?

4 A. That's correct.

5 Q. And John did AGEO cases, right?

6 A. Yes.

7 Q. And you guys had occasion to cross paths at meetings or
8 conferences or connection with cases, right?

9 A. Yes.

10 Q. And John, you came to learn, ran a lot of informants,
11 right?

12 A. John did, yes.

13 Q. And when I say "ran informants," I mean he worked with
14 people who were providing information to the DEA on
15 investigation. Do you understand what I mean?

16 A. Yes, sir.

17 Q. And you ran informants, right?

18 A. Yes.

19 Q. And you knew John to work on large cases in Venezuela,
20 right?

21 A. Yes.

22 Q. And Colombia, yes?

23 A. Yes.

24 Q. And John did that well, yes?

25 A. Yes.

NAQVCOS4

Escobar - Cross

1 Q. Now, with respect to the AGEO -- and again, we'll just maybe
2 remind the jury after lunch that stands for Attorney General
3 Exempted Operation; correct?

4 A. Correct.

5 Q. An AGEO is a kind of undercover operation that targets the
6 financial -- the money movements of large narcotics or drug
7 trafficking organizations?

8 A. Correct.

9 Q. And that's like multimillion-dollar or maybe sometimes even
10 billion-dollar operations, right?

11 A. Correct.

12 Q. That's what John was focused on when he was the GS, the
13 group supervisor of Group 10, right?

14 A. Correct.

15 Q. And in the course of running those kinds of investigations,
16 did the group have occasion to seize money, take money, from
17 drug trafficking organizations?

18 A. Yes.

19 Q. And on occasion to take drugs away from drug trafficking
20 organizations?

21 A. Yes.

22 Q. And the idea behind AGEOs is to try to dismantle drug
23 trafficking organizations from the financial side, I think you
24 said, right?

25 A. That's correct.

NAQVCOS4

Escobar - Cross

1 Q. And that's part of the DEA's mission, right?

2 A. It is.

3 Q. Now, in order to build a big AGEO case against a drug
4 trafficking organization, it's important to collect
5 information, yes?

6 A. Correct.

7 Q. And analyze that information?

8 A. Yes.

9 Q. And use that information to advance or build the
10 investigation, right?

11 A. That's right.

12 Q. And is it fair to say that as an agent, you at all levels
13 are trying to gather information?

14 A. Yes, that's fair.

15 Q. Now, these big AGEO cases and the cases John worked on in
16 Venezuela and the cases he worked on in Colombia, those don't
17 happen overnight, right?

18 A. No, sir.

19 Q. It takes weeks, months, and often years to build those
20 kinds of cases; correct?

21 A. That is correct.

22 Q. And all different sources of information, yeah?

23 A. Can you repeat?

24 Q. It takes all different sources of information?

25 A. Yes. Correct.

NAQVCOS4

Escobar - Cross

1 Q. And on some of these cases, from time to time I think you
2 said Washington, DEA headquarters, is involved, right?

3 A. Correct.

4 Q. Department of Justice is involved, right?

5 A. Yes, sir.

6 Q. Now, during the course of an investigation, information can
7 come from all sorts of different places; is that right?

8 A. That's correct.

9 Q. Literally anywhere and everywhere you can get information
10 that's helpful, helps advance the case, right?

11 A. Correct.

12 Q. And just taking a couple of different sources of
13 information, if I can, Group 10 can get information to help
14 build a case from another DEA group, right?

15 A. Correct.

16 Q. Either in Miami or in California or Ohio, right?

17 A. Yes. Correct.

18 Q. They could also get information from an international DEA
19 office, a DEA office overseas, right?

20 A. Correct.

21 Q. Is another source of information for building a big case
22 information from private citizens?

23 A. It could be, yes, sir.

24 Q. Information from members of the public, right?

25 A. Yes, sir.

NAQVCOS4

Escobar - Cross

1 Q. And in fact, DEA has the ability to accept information from
2 any member of the public, like on a hotline or a tips website,
3 I think; is that right?

4 A. That's correct.

5 Q. And so anyone can pick up the phone, private citizen, and
6 call their local DEA office and provide information, right?

7 A. Correct.

8 Q. And the DEA divisions or field offices, those phone numbers
9 are publicly listed?

10 A. I'm sorry, again.

11 Q. Phone numbers to the various DEA offices, those are
12 publicly listed?

13 A. Correct. Yes, sir.

14 Q. Okay. And information can also come to help build a case
15 from people who themselves have been involved in the narcotics
16 trade, right?

17 A. Yes.

18 Q. Okay. And I think we've heard a couple of different terms
19 for how to refer to those people, right? We heard the term
20 "source," right, a source of information?

21 A. Yes, sir.

22 Q. So sometimes the source of information might be somebody
23 who got caught in a drug trafficking problem, shall we say?

24 A. Yes.

25 Q. And decides to maybe turn over and give information to the

NAQVCOS4

Escobar - Cross

1 government to help them?

2 A. Correct.

3 Q. Have you heard people call that "flipping"?

4 A. Flipping, yes, sir.

5 Q. Okay. Like flipping from being a guy who was violating the
6 narcotics laws to being a guy who tries to help DEA, right?

7 A. Correct.

8 Q. Okay. And there's also something called a confidential
9 informant, right?

10 A. Yes.

11 Q. And a confidential informant is somebody who the DEA will
12 actually pay for information when they get it on occasion,
13 right?

14 A. Yes, it could be, yes.

15 Q. Okay. And you have to go through a lot of official
16 paperwork to become a confidential informant, right?

17 A. Yes, paperwork, yes.

18 Q. Now, another kind of person involved in the narcotics trade
19 who may end up providing information is someone called a
20 cooperating witness, right?

21 A. Correct.

22 Q. And let's make sure we're on the same page with what a
23 cooperating witness is. Cooperating witness is somebody -- can
24 be somebody who's charged with a crime and decides that they
25 would like to hope for leniency in that crime and so they

NAQVCOS4

Escobar - Cross

1 provide information. So they are not getting money, but they
2 are getting leniency; is that right?

3 A. Yes, that's one source.

4 Q. And often those people have to plead guilty, these
5 cooperating witnesses, right?

6 A. Yes.

7 Q. They want leniency in exchange for their information?

8 A. Yes.

9 Q. Okay. Now, if you have a target that you're investigating
10 who you think could be a source of information and he has not
11 been charged with a crime, you don't need permission to try to
12 flip that person, right?

13 A. Can you rephrase -- like permission from who?

14 Q. From the U.S. Attorney's Office, for example.

15 A. You don't necessarily need permission; but we in general,
16 we're working with the U.S. Attorney's Office in these kind of
17 cases.

18 Q. Okay. But if your group encounters somebody and they are
19 not charged and they don't have a lawyer and you think they may
20 be a good source, you don't need permission to try to flip
21 them, right?

22 A. No, no.

23 Q. Okay. Now, just with respect to the structure of -- I
24 think we've talked about ASACs like yourself, right, Assistant
25 Special Agents in Charge. We've talked about group

NAQVCOS4

Escobar - Cross

1 supervisors. That's sort of top, maybe the middle. And the
2 actual agents that are sort of on the street or running cases
3 or doing intelligence, they're special agents, right?

4 A. Correct. Yes.

5 Q. With respect to each case, each individual investigation,
6 there's something called a case agent, right?

7 A. Yes.

8 Q. And the case agent is the man or woman who is in charge of
9 running that case, right?

10 A. Correct. The direction of the case.

11 Q. Right. Okay.

12 Now, you talked a little bit about training, and I
13 think you said you went to Quantico --

14 A. Yes, sir.

15 Q. -- to do some training. The agents that you supervised,
16 they also had training, right?

17 A. Yes, sir.

18 Q. And they also go to Quantico; correct?

19 A. Correct.

20 Q. And periodically, they receive other training after they
21 leave Quantico when they're on the job?

22 A. Yes, sir.

23 Q. And is it fair to say that a significant amount of training
24 as an agent occurs on the job?

25 A. Yes, sir.

NAQVCOS4

Escobar - Cross

1 Q. And agents are encouraged to learn from the customs and
2 practices of other agents, right?

3 A. Correct.

4 Q. And during your career in terms of the experience you
5 picked up on the job, you learned how to analyze how phones,
6 telephones, are used in the course of the narcotics trafficking
7 business, right?

8 A. Yes, sir.

9 Q. And I imagine since you've worked on AGEOs, you've also had
10 occasion to learn how financial institutions, bank accounts,
11 wires are used to advance drug trafficking?

12 A. Yes.

13 Q. Okay. And the kinds of steps that drug traffickers take to
14 hide their activities, is that something else you pick up on
15 the job?

16 A. Yes, sir.

17 Q. Now, with respect to the agents that you are supervising as
18 an ASAC or as a GS, a group supervisor, you're not
19 micromanaging them; correct?

20 A. No, sir.

21 Q. And you're not sitting over their shoulder watching every
22 move, right?

23 A. Correct.

24 Q. And you trust your agents to do what they're supposed to
25 do?

NAQVCOS4

Escobar - Cross

1 A. Yes, sir.

2 Q. And when John was under your supervision, is it fair to say
3 that you expected him to manage himself?

4 A. I did, yes.

5 Q. And to make good decisions?

6 A. Yes.

7 Q. And exercise good judgment?

8 A. Yes.

9 Q. Problem solve when he had to problem solve?

10 A. Yes.

11 Q. Now, you talked about, I think, the personnel manual. And
12 I think you said the personnel manual guides the conduct of
13 agents; is that right?

14 A. Correct.

15 Q. That thing is long; correct?

16 A. Yes, it's --

17 Q. Like a zillion pages?

18 A. Very big.

19 Q. Right. And you don't carry that around with you?

20 A. No, sir.

21 Q. It's available online, right?

22 A. Correct.

23 Q. And how many chapters does that personnel manual have?

24 A. I'm not sure. Several.

25 Q. Like several dozen?

NAQVCOS4

Escobar - Cross

1 A. Like probably a dozen.

2 Q. Okay. And are you familiar with something called the
3 agent's manual?

4 A. Yes.

5 Q. Okay. And the agent's manual is also a whole long list of
6 policies, procedures, conduct, etc., right?

7 A. Yes.

8 Q. And you don't carry that around with you?

9 A. No, sir.

10 Q. That's also available online because it's like a million
11 pages?

12 A. Yes. Correct.

13 Q. I'm being a little facetious here, but it's long?

14 A. It's several chapters.

15 Q. And DEA has a lot of other manuals that govern agents'
16 conduct, right?

17 A. I would say those are the two main ones that deal with
18 conduct.

19 Q. Are you familiar with the administrative manual?

20 A. Yes.

21 Q. That's another manual that guides conduct?

22 A. Yes.

23 Q. Are you familiar with the lab operations manual that guides
24 your conduct?

25 A. Yeah, for lab employees, yes, sir.

NAQVCOS4

Escobar - Cross

1 Q. Okay. And of course, there's the planning and inspection
2 manual you know?

3 A. Yes.

4 Q. Okay. And there's the practitioner's manual?

5 A. Not familiar with that one.

6 Q. A lot of manuals?

7 A. Yes.

8 Q. They all govern conduct, correct?

9 A. Yes.

10 Q. And there's a field manual. You're not aware of that?

11 A. Not aware of that.

12 Q. Okay. Are you aware of the money laundering investigative
13 manual?

14 A. Yes.

15 Q. Okay. That's another manual that kicks in to govern
16 conduct, right?

17 A. Yes.

18 Q. Okay. And the international operations manual, you must be
19 familiar with that one?

20 A. Yes.

21 Q. Okay. Now, none of these manuals, as far as you know, say
22 that an agent may never communicate with a private
23 investigator?

24 A. No.

25 Q. And none of these manuals say that an agent can never speak

NAQVCOS4

Escobar - Cross

1 to a defense attorney?

2 A. Correct.

3 Q. And none of these manuals say that an agent may never think
4 while he's on duty about what he might do when he retires?

5 A. Correct.

6 Q. None of these manuals say that an active agent may never
7 accept information from a retired agent, right?

8 A. Correct.

9 Q. You also talked with Mr. Swett a little bit about a phone,
10 so I want to talk to you a little bit about phones.

11 You mentioned you were unaware of a certain phone that
12 John had?

13 A. Yes.

14 Q. You're not aware of all the phones that all your agents
15 carry; correct?

16 A. That is correct.

17 Q. And there were points in your career where you carried
18 multiple phones, right?

19 A. Yes.

20 Q. And DEA issues a telephone, a cell phone, to the agents,
21 right?

22 A. Correct.

23 Q. And agents are also permitted to carry personal phones,
24 right?

25 A. Yes.

NAQVCOS4

Escobar - Cross

1 Q. And there were times in your career when you walked around
2 with three or four different phones, right?

3 A. Yes.

4 Q. And did your supervisors know every single phone you
5 carried for whatever reason?

6 A. I'm not sure if they would have known or not. I don't -- I
7 don't believe so.

8 Q. Okay. And the reason you carried different phones is
9 because you were being responsible, right?

10 A. Yes.

11 Q. And what I mean by that is you carried different phones for
12 different geographic areas that you went to, right?

13 A. Correct.

14 Q. Like a Colombian phone, for example?

15 A. Correct.

16 Q. A Panamanian phone?

17 A. Yes.

18 Q. A New York phone? A Mexican phone maybe?

19 A. Yes.

20 Q. And are you aware that certain DEA agents carry different
21 phones to deal with different sources of information?

22 A. Yes.

23 Q. Okay. And it's not uncommon in your experience for a
24 single agent to carry multiple phones because he might have
25 multiple sources calling him, multiple different people calling

NAQVCOS4

Escobar - Cross

1 him, right?

2 A. That's correct.

3 Q. Okay. And you want to be careful about a particular phone
4 getting compromised by the bad guys?

5 A. Exactly.

6 Q. And you know when you go overseas to some countries that,
7 you know, may be more heavily involved in narcotics
8 trafficking, they can intercept your telephones, they can
9 wiretap you or cut into your communications and listen without
10 you even knowing, right?

11 A. Correct.

12 Q. That's another reason to carry extra phones and be careful
13 with your phones, right?

14 A. Yes, sir.

15 Q. Okay. Now, there was some discussion about encrypted phone
16 applications that you had with Mr. Swett, do you remember that?

17 A. Yes.

18 Q. WhatsApp is an encrypted phone application, yes?

19 A. Yes.

20 Q. And in your experience, WhatsApp is commonly used among DEA
21 agents, yes?

22 A. Correct.

23 Q. And especially when they travel overseas?

24 A. Yes.

25 Q. John traveled overseas, yes?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. And the WhatsApp application, does it come on the DEA
3 phone?

4 A. You have to download it to -- from the store.

5 Q. But it's totally permissible?

6 A. Yes.

7 Q. Now, you mentioned a little bit about learning about
8 Mr. Recio and his retirement from DEA. Pretty common for
9 agents to retire and go to work in the private sector for the
10 defense side; is that correct?

11 A. It's common, yes.

12 Q. And that's sort of been a growing field in the past five
13 years?

14 A. Yes.

15 Q. You also were asked about a couple of defense attorneys.

16 In the course of your career, you've had occasion to
17 deal with defense lawyers, I imagine?

18 A. Yes.

19 Q. And in your experience, when agents and defense lawyers
20 work on cases together for two or three or four years, they're
21 going to get to know each other, right?

22 A. Yes.

23 Q. And they form a relationship, yes?

24 A. Correct.

25 Q. And if you've worked like ten cases with somebody where,

NAQVCOS4

Escobar - Cross

1 you know, you're on the government side and they're on the
2 defense side, you form a relationship with them?

3 A. Yes.

4 Q. And there were certain defense attorneys that you preferred
5 to work with, right?

6 A. There were defense attorneys that -- yeah, that typically
7 worked the same kind of cases that we were working, yeah.

8 Q. And there were defense attorneys you preferred to work with
9 because you knew them?

10 A. Sure.

11 Q. And those are lawyers whose kind of real house, whose
12 specialty area is drug trafficking; correct?

13 A. Yes.

14 Q. David Macey is one of those guys?

15 A. I never worked with Mr. Macey.

16 Q. Okay. But you know other --

17 A. Yes, I am aware of who he is. He's well-known in the
18 narcotic defense field in Miami.

19 Q. And it's often helpful to know the defense lawyer because
20 you may be able to engage in a conversation to convince his
21 client to cooperate with you, right?

22 A. Sure.

23 Q. A question or two, if you don't mind, about NADDIS. Right.
24 And I think you said NADDIS was this indexing system, the
25 Narcotics and Dangerous Drugs Indexing System?

NAQVCOS4

Escobar - Cross

1 A. Correct.

2 Q. That's kind of an information bank within DEA, yes?

3 A. Yes.

4 Q. And it's, for all intents and purposes, a database of tips,
5 right?

6 A. Correct. Case work, information, yeah.

7 Q. Anybody who learns any information about a case can put it
8 in NADDIS, yes?

9 A. Yes.

10 Q. Now, you need to log in if you're a special agent to get
11 into NADDIS, right?

12 A. Correct.

13 Q. And you have a login ID?

14 A. Yes.

15 Q. And when you get into NADDIS with your login ID, NADDIS
16 keeps track of the fact that you've been in the system, right?

17 A. It should, yes, sir.

18 Q. In other words, if an agent logs into NADDIS to do a
19 search, it leaves a footprint?

20 A. It should, yes.

21 Q. Or an electronic footprint?

22 A. Yes.

23 Q. And that's commonly known by the agents, yes?

24 A. Yes.

25 Q. Now, let's talk a little bit about the information in

NAQVCOS4

Escobar - Cross

1 NADDIS. Well, first of all, a lot of people have access to
2 NADDIS, right?

3 A. Special agents and intel specialists.

4 Q. And intel specialists are not special agents?

5 A. No, they are not.

6 Q. Okay. They are a different group of people?

7 A. They are a different category in DEA; correct.

8 Q. Okay. Now, if you are a special agent or an intel analyst,
9 and you want to see if somebody you're investigating is already
10 being investigated by the Cleveland office, you can check that
11 out in NADDIS, right?

12 A. Yes.

13 Q. Or if you want to find out if a particular cooperating
14 witness or source of information might be helpful to a certain
15 case, you could check that out in NADDIS, right?

16 A. They have a different system for sources of information.

17 Q. Okay. Fair enough.

18 But if you had to find out the name of somebody who
19 was running a case, a case agent name, you could find out a
20 case agent name in NADDIS, yes?

21 A. Yes, sir.

22 Q. Okay. And then you could direct your source of
23 information, whether it's a public citizen, a private citizen,
24 to the case agent?

25 A. Correct.

NAQVCOS4

Escobar - Cross

1 Q. Okay. And is it responsible conduct for an agent to run
2 something in NADDIS almost every time they learn new
3 information?

4 A. I would say it's -- yes, that's good practice.

5 Q. It's prudent, right?

6 A. Yeah, it's prudent. Yup.

7 Q. Okay. With respect to the information that is in NADDIS,
8 it comes from all different areas. It comes from agents or
9 analysts, it can come secondhand, thirdhand, fourth hand,
10 right?

11 A. Correct.

12 Q. So NADDIS information is not perfect, right?

13 A. It could be pertinent, yes.

14 Q. I said it's not perfect?

15 A. Oh, perfect. Yes, correct, it is not perfect.

16 Q. In other words, it can be wrong?

17 A. Correct. We have to collaborate on that and figure it out,
18 yes.

19 Q. Right. And NADDIS has information that's old and stale,
20 right?

21 A. Yes, sir.

22 Q. And it has information that's wrong?

23 A. Yes.

24 Q. And it has information that has changed since it was put
25 in?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. And NADDIS isn't fact-checked; it's just a bank that stores
3 things; it's not fact-checked?

4 A. Correct.

5 Q. Have you ever heard the story, Special Agent Escobar, about
6 the guy who ran the name John LNU in NADDIS?

7 A. No.

8 MR. SWETT: Objection.

9 Q. The name John LNU, L-N-U. Did you ever encounter that name
10 in NADDIS?

11 A. Have I ever seen it?

12 Q. Yes.

13 A. Yes.

14 Q. "John LNU" stands for John Last Name Unknown; correct?

15 A. Correct.

16 Q. His name is in NADDIS, right?

17 A. His name? Yeah, John LNU.

18 MR. SWETT: Objection.

19 THE COURT: I think you need to clarify the question.
20 Sustained to that extent.

21 Q. There are John Doe-type names in NADDIS, yes?

22 A. Yes.

23 Q. Okay. Now, you mentioned a conversation or at least an
24 encounter you had with John Costanzo after you, I guess,
25 learned that Mr. Recio retired, right?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. And Mr. Swett asked you a bunch of questions, did Agent
3 Costanzo tell you about a telephone that he had, tell you that
4 he was talking to Recio. Do you remember those questions?

5 A. Yes.

6 Q. I want to just go through that encounter again.

7 My understanding from your testimony was you thought
8 Manny Recio was working at a bank, right?

9 A. Correct.

10 Q. And you may have learned otherwise, right?

11 A. Correct.

12 Q. And you went to John to kind of ask him what's up, right?

13 A. Yes.

14 Q. That was sort of a casual approach and just kind of a
15 "what's up with our old buddy"?

16 A. Yes, very casual.

17 Q. It wasn't some sort of investigation?

18 A. No.

19 Q. Okay. And I think you said you asked, What's the deal with
20 Manny? What's he doing?

21 A. Correct. Yes.

22 Q. And John said something to the effect of, He's doing his
23 thing.

24 A. Exactly.

25 Q. Okay. And after that, you asked no more questions, right?

NAQVCOS4

Escobar - Cross

1 A. Correct.

2 Q. None of your business; correct?

3 A. Correct.

4 Q. You just left it at that?

5 A. Yes.

6 Q. And you never asked him about any telephone, right?

7 A. No.

8 Q. You never asked him about his ongoing discussions with
9 Recio, right?

10 A. No.

11 Q. And you never asked him about Recio's work with defense
12 attorneys, right?

13 A. No.

14 Q. Was this the equivalent of what I would call water cooler
15 conversation; like, Hey, what's up with our old buddy?

16 A. Yeah, that's fair.

17 Q. Okay. Almost done, Special Agent Escobar.

18 You were shown a couple of text messages.

19 A. Yes.

20 Q. And Mr. Swett asked you to read them back and forth with
21 him?

22 A. Yes, sir.

23 Q. You were not part of those text chains, right?

24 A. No.

25 Q. And you don't actually know anything about those text

NAQVCOS4

Escobar - Cross

1 chains, right?

2 A. Correct.

3 Q. And you don't know what came before?

4 A. Correct.

5 Q. You don't know what came after?

6 A. No.

7 Q. And you don't know the context at all?

8 A. No, sir.

9 Q. You were basically shown those text messages by the U.S.

10 Attorney's Office four hours -- four years, I should say, after
11 they happened, right?

12 A. Yes.

13 Q. And you were just kind of reading the words off the page?

14 A. Correct.

15 Q. You've worked with confidential sources, yes?

16 A. Yes.

17 Q. Are you familiar with any confidential sources who were
18 deactivated by DEA?

19 MR. SWETT: Objection. Outside the scope of direct.

20 THE COURT: Overruled.

21 A. Can you repeat the question?

22 Q. Are you familiar with any confidential sources that were
23 deactivated by DEA, yes or no?

24 A. Yes.

25 Q. Are you familiar with any that were reactivated?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. Okay. And that had to go through a very rigorous process?

3 A. Yeah. It's the same process. I mean, to deactivate, some
4 paperwork; to reactivate, you know, reverse the paperwork.

5 MR. MUKASEY: May I have one moment, Judge?

6 THE COURT: Sure.

7 (Counsel conferred)

8 MR. MUKASEY: Thank you, Special Agent Escobar.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Mr. Gainor.

11 MR. GAINOR: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MR. GAINOR:

14 Q. Special Agent Escobar, good afternoon.

15 A. Good afternoon.

16 Q. My name is Ron Gainor. I represent Manny Recio.

17 This is the first time you and I have had the pleasure
18 of meeting each other; correct?

19 A. Yes, sir.

20 Q. All right. And not that there's anything wrong with it,
21 you've had the opportunity to meet and discuss your testimony
22 with members of the prosecutors' team several times; correct?

23 A. Yes, we spoke, yes.

24 Q. In fact, the most recent meeting was 8:30 in the morning
25 today; correct?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. Now, on direct and to a good extent with Mr. Mukasey's
3 cross-examination, you have testified with regard to your
4 responsibilities at DEA and the people that you oversee;
5 correct?

6 A. Correct.

7 Q. And I believe you testified during direct examination that
8 you currently oversee four groups; correct?

9 A. Correct.

10 Q. All right. And one of them is Group 10?

11 A. Yes.

12 Q. All right. And Group 10 deals with these, for the most
13 part, larger international narcotics money laundering
14 investigations, is that fair?

15 A. That's fair, yes, sir.

16 Q. And then these other groups would be more in different
17 areas, including domestic areas too; correct?

18 A. Correct.

19 Q. And there might be some overlap into -- into international
20 subject matter with these other groups?

21 A. Yes.

22 Q. And there's a number of people that you oversee in these
23 four groups, maybe anywhere between six to seven or eight
24 people per group, does that sound about right?

25 A. Yeah, that's fair. Yes, sir.

NAQVCOS4

Escobar - Cross

1 Q. And obviously you're familiar from being in DEA with the
2 personnel in your group, some outside of your group; correct?

3 A. Yes.

4 Q. Are you familiar with Special Agent Robert Luken, for
5 instance?

6 A. I am.

7 Q. Goes by the name "Shaggy," just to see how much you know.

8 A. Yes.

9 Q. Is that correct?

10 A. That's correct.

11 Q. All right. He's one of the people that are in groups that
12 you had supervised?

13 A. Yes.

14 Q. Also familiar with a Special Agent Brian Smith?

15 A. Brian Smith, yes.

16 Q. He also goes by the name "Smitty"; correct?

17 A. Correct.

18 Q. He's also one of the people from time to time that you've
19 had contact with?

20 A. Yes.

21 Q. Contact with Special Agent Guillermo Fuentes?

22 A. Not -- not in probably ten years.

23 Q. But --

24 A. In the past.

25 Q. In the past?

NAQVCOS4

Escobar - Cross

1 A. Yes.

2 Q. Special Agent John Waters?

3 A. Yes.

4 Q. Within ten years?

5 A. Probably -- yeah, probably about that.

6 Q. Special Agent James Lowndes, L-O-W-N-D-E-S, you've heard of
7 him?

8 A. Doesn't sound familiar.

9 Q. Supervised dozens of agents and come in contact with even
10 more than dozens, would that be fair to say?

11 A. Yes.

12 Q. Had contact with Lee Lucas, Special Agent Lee Lucas?

13 A. In the past.

14 Q. Yes?

15 A. Yes, in the past, yes.

16 Q. Special Agent Jeremy Youngblood?

17 A. Yes, in the past.

18 Q. How about Special Agent Keri Evans?

19 A. Keri Evans? Yes, that one's been a lot longer.

20 Q. You also specifically talked about responsibilities, not
21 only as an ASAC, an Assistant Special Agent in Charge, but
22 responsibilities of the people, the subordinates below you;
23 correct? Do you remember that testimony?

24 A. Yes.

25 Q. And I believe we had already covered to some extent and

NAQVCOS4

Escobar - Cross

1 some of the other lawyers did responsibilities with regard to
2 investigating the money laundering investigations and their
3 intersection with narcotics organizations, that's common?

4 A. That's very common, yes, sir.

5 Q. Your responsibilities involve people that have been
6 arrested in country in the United States; correct?

7 A. Yes.

8 Q. And people that get arrested outside of the country as
9 well; correct?

10 A. Yes.

11 Q. Pursuant to what is called a provisional arrest warrant,
12 you've worked with that before?

13 A. I have, yes, sir.

14 Q. On more than one occasion, sir?

15 A. Yes.

16 Q. A provisional arrest warrant, for instance, in terms of
17 your responsibilities, your exposure, involves potentially
18 arresting somebody on an arrest warrant outside of the country
19 where there is a sealed indictment inside of this country?

20 MR. SWETT: Objection to the form.

21 THE COURT: If you could clarify please.

22 Q. Someone who's arrested on a provisional arrest warrant
23 usually is outside of the country; correct?

24 A. Correct.

25 Q. And there would be corresponding paperwork in country, in

NAQVCOS4

Escobar - Cross

1 the United States, in the form of a -- not unusual -- sealed
2 indictment; correct?

3 A. Correct.

4 Q. You've worked with provisional arrest warrants and reviewed
5 them before?

6 A. I have, yes, sir.

7 Q. They typically contain a lot of information?

8 A. Yes.

9 Q. Including an agent's name?

10 A. Yes.

11 Q. You've worked with something called 959 charges before?

12 A. Yes.

13 Q. That's importation of drugs that make it inside of the
14 country originating from outside of the country?

15 A. That is correct.

16 Q. You were asked some questions by both the prosecutor and
17 Mr. Mukasey with regard to three of the exhibits or several of
18 the exhibits that you were shown. You remember that first
19 exhibit being that CorrLinks invite?

20 A. Yes.

21 Q. You're familiar with CorrLinks being the federal prison
22 mailing system or emailing system between inmates and people
23 actually in the -- defense attorneys or private investigators?

24 A. Yes.

25 Q. You were also shown chats before that I believe you

NAQVCOS4

Escobar - Cross

1 answered questions about that you had no participation in
2 either before or after, you were just asked to review those
3 chats, you had no personal knowledge of them?

4 A. Correct.

5 Q. But one of the chats that you read, I think it was
6 Government Exhibit GX 364, there was a discussion of someone, a
7 Tumaco guy being afraid to cooperate, do you remember that
8 exchange?

9 A. Yes.

10 Q. And this concept of cooperation, not to belabor the point,
11 is the idea that someone who is arrested or about to be
12 arrested would give potentially and hopefully information to
13 DEA or other law enforcement that can be used, correct, in the
14 investigation?

15 A. That's correct.

16 Q. There were other discussions that you were asked about, a
17 contact that Mr. Recio may have had with two defense attorneys
18 in particular?

19 A. Yes.

20 Q. It would be Mr. Macey and Mr. Guerra?

21 A. Yes, sir.

22 Q. You are aware that -- from talking to people, from your
23 experience, that Mr. Recio worked with other defense attorneys
24 as well?

25 MR. SWETT: Objection. Hearsay.

NAQVCOS4

Escobar - Redirect

1 THE COURT: Sustained.

2 Q. But in any event, you don't have any personal knowledge of
3 the content in any of those texts that you were shown?

4 A. I do not, no.

5 MR. GAINOR: If I may have a moment, your Honor.

6 THE COURT: Sure.

7 (Counsel conferred)

8 MR. GAINOR: I have nothing further, your Honor.

9 THE COURT: Thank you.

10 Redirect, Mr. Swett?

11 MR. SWETT: Yes, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SWETT:

14 Q. Special Agent Escobar, why don't we start talking about the
15 relationships between agents and attorneys. You were asked on
16 cross-examination about attorneys that you've worked with;
17 correct?

18 A. Yes.

19 Q. And you were asked if there were particular attorneys that
20 have -- that you've developed a rapport with after working with
21 them on a number of cases; is that right?

22 A. That's correct.

23 Q. Special Agent Escobar, if you can estimate, approximately
24 how many times do you think you would speak one-on-one with a
25 defense attorney about the work you were doing in a given year?

NAQVCOS4

Escobar - Redirect

1 A. One-on-one, very limited. Dozen times.

2 Q. A dozen times in a single year. Not hundreds of times?

3 A. No.

4 Q. When you were speaking with the defense attorneys, can you
5 describe the situation generally?

6 A. Correct.

7 Q. Excuse me. Let me rephrase.

8 Can you describe the circumstances in which you would
9 interact with defense attorneys.

10 A. Sure. If we're discussing a case, we would talk about
11 possible cooperation or where everything can go, what the --
12 what the defendant is -- what can he bring to the table. So we
13 would just talk about generalities of the case.

14 Q. And who was involved in those conversations?

15 A. Typically it would be the case agent, the co-case agent,
16 the defendant, the defense attorney, and U.S. Attorney's
17 Office.

18 Q. So again, how frequently would you have one-on-one
19 conversations with defense attorneys about these cases?

20 A. A dozen times.

21 Q. Let me ask the same questions about private investigators.
22 How frequently, in your experience, were you speaking
23 one-on-one with private investigators about criminal cases?

24 A. So when I was doing cases, there was -- private
25 investigators weren't a huge scenario, that wasn't happening a

NAQVCOS4

Escobar - Redirect

1 lot. So I talked very infrequently with private investigators,
2 very infrequently, if at all.

3 Q. But it's fair to say that you're not having hundreds of
4 calls with the defense attorney to talk about the case?

5 A. No.

6 Q. Or text messages either?

7 A. No.

8 Q. Okay. Now, with respect to those relationships with
9 attorneys, what, if anything, would you ever do to steer cases
10 to specific defense attorneys?

11 A. To a specific defense attorney? I wouldn't -- I would let
12 the client or the defendant make his decision up on whoever he
13 wanted to go with.

14 Q. So why wouldn't you direct or try to direct DEA targets to
15 specific attorneys?

16 A. Just for the transparency of the scenario.

17 Q. And again, about the relationship you had with these
18 attorneys, what payments, if any, did you ever receive from
19 these attorneys?

20 A. None.

21 Q. Why not?

22 A. Against policy.

23 Q. And how about private investigators, what payments, if any,
24 did you ever receive from private investigators?

25 A. None.

NAQVCOS4

Escobar - Redirect

1 Q. Why not?

2 A. It's against our policy.

3 Q. Now, you were asked on cross-examination about what you
4 asked Special Agent Costanzo regarding his relationship with
5 Recio. Do you remember that?

6 A. Yes.

7 Q. And I think you were asked on cross-examination if this was
8 essentially water cooler talk, right?

9 A. Correct.

10 Q. Now, again, how frequently would you communicate with
11 Special Agent Costanzo when you were supervising him?

12 A. Probably on a daily basis.

13 Q. And you would talk about lots of different aspects of the
14 cases he was working?

15 A. Yeah. I would get briefed up on the cases and he would
16 tell me what was going on.

17 Q. What, if anything, did he ever tell you about Recio's
18 involvement in any of the work that Group 10 was doing?

19 A. He didn't tell me anything.

20 Q. And if he had told you that Recio was involved in Group 10
21 work, how would you have reacted?

22 MR. MUKASEY: Objection.

23 THE COURT: Overruled.

24 MR. MUKASEY: Calls for speculation.

25 THE COURT: Overruled.

NAQVCOS4

Escobar - Redirect

1 Q. What would you have done if Special Agent Costanzo had told
2 you about Recio's involvement as a private investigator in
3 Group 10 work?

4 A. I would have told him to be careful. Be careful with that
5 relationship because there could be an appearance of, you know,
6 passing information.

7 Q. But again, he never told you anything about that?

8 A. Never told me anything about it.

9 Q. So you had no knowledge as to whether Manuel Recio was
10 working with Special Agent Costanzo while you were supervising
11 Agent Costanzo?

12 A. Correct.

13 Q. There was some cross-examination about carrying multiple
14 phones. Do you remember that?

15 A. Yes.

16 Q. So maybe you can just explain why an agent might have
17 multiple phones.

18 A. Sure. So in my scenario, I was the undercover of a big
19 AGEO investigation, and I was dealing with different folks from
20 different -- different parts of the country, different parts of
21 the world. I had informants in Colombia, some in Panama, some
22 in Mexico. And I didn't want to -- me personally, I didn't
23 want to cross the -- have the phones intersected for several
24 reasons. Number one, I want to know who I was talking to at a
25 certain time. Second, I didn't want to put myself in a bad

NAQVCOS4

Escobar - Redirect

1 scenario by picking up the wrong phone and, you know, giving up
2 a different part of a case to them. So for me, that's why I
3 carried around different phones; it was more of a communication
4 safety for me, so that's why I carried different phones.

5 Q. And who paid for those phones?

6 A. Mostly out of the operation, out of the DEA operation.

7 Q. So did a defense attorney pay for those undercover phones?

8 A. No.

9 Q. Did a private investigator pay for those undercover phones?

10 A. No.

11 Q. And in general, with respect to the phones you're using,
12 which phones would you use to conduct DEA work?

13 A. For DEA business, I had my DEA phone. I would use that to
14 talk to the U.S. attorneys, defense attorneys, you know,
15 whoever needed to talk to me from DEA. And then, you know, the
16 other phones were strictly for the confidential informants or
17 whoever the target was of that investigation on that phone.

18 Q. And what sort of DEA work, if any, would you conduct on
19 your personal phone?

20 A. None.

21 Q. Okay. And I think there was some discussion on
22 cross-examination about having specific phones to speak with
23 specific sources. Is that something you're familiar with?

24 A. Yes.

25 Q. Now, as far as you knew as the ASAC supervising Group 10,

NAQVCOS4

Escobar - Redirect

1 was Mr. Recio a source for Group 10?

2 A. No.

3 Q. He wasn't signed up as a source?

4 A. He was not signed up as a source, no, sir.

5 Q. There was no paperwork indicating that Mr. Recio was an
6 active source for Group 10?

7 A. No.

8 Q. And as far as you know, was there any authorization to get
9 a special phone for anyone to communicate with Mr. Recio about
10 DEA work?

11 A. No.

12 Q. Now, when an agent has authorization to get a phone to
13 communicate with a source, again, who pays for that phone?

14 A. DEA.

15 (Continued on next page)

Naq2Cos5

Escobar - Redirect

1 Q. The source wouldn't pay for it?

2 A. No.

3 Q. And would a member of the defense side pay for it?

4 A. No.

5 Q. But again, sitting here today, what, if anything, do you
6 know about a phone that Special Agent Costanzo used to
7 communicate with Mr. Recio about DEA cases?

8 MR. MUKASEY: Asked and answered twice.

9 THE COURT: Sustained.

10 Q. There were some questions about on-the-job training. Do
11 you recall those questions?

12 A. Yes.

13 Q. I believe you were asked if significant training occurs
14 on the job, is that right?

15 A. Right.

16 Q. Now, who would you say in a group is primarily responsible
17 for ensuring that that training complies with DEA policies?

18 A. So when we come out of the academy, we receive what we call
19 field training agents. So we get a senior agent that's been on
20 the job for quite some time, and then we use them as kind of
21 the, like, the guiding principle. So those are the ones who
22 give most of the instruction on how you build cases and how you
23 do that. So . . .

24 Q. And is there a formal training to supplement the on-the-job
25 training?

Naq2Cos5

Escobar - Redirect

1 A. Well, they went through the academy, right, so that's the
2 formal side of the house. And then when they get into the
3 field, that's where they start working with the field agents
4 and, you know, they go that route.

5 Q. And what opportunities, if any, do agents have to get a
6 refresher on the DEA policies that they have to abide by?

7 A. So for policies every year, we have to take our standards
8 of conduct test. Every year we have to sign it. And then
9 throughout your career, you are always getting, like,
10 continuing education, going to Quantico for different classes
11 and whatnot. So throughout your career, you have an
12 opportunity to take more training.

13 Q. Now, I think you testified earlier about the voluminous
14 amount of materials that the DEA has in various manuals, right?

15 A. Yes.

16 Q. Now, your testimony is that sharing NADDIS information is a
17 violation of DEA policy, right?

18 A. Correct.

19 Q. Can you tell me the chapter that that's contained in?

20 A. I know it is in the personnel manual.

21 Q. But you don't know the specific provision?

22 A. No, sir.

23 Q. Do you have any doubt as to whether that is a DEA policy?

24 A. No. I know it is.

25 THE COURT: I just want to clarify, you said now your

Naq2Cos5

Escobar - Redirect

1 testimony is that sharing what information is a violation?

2 MR. SWETT: NADDIS information.

3 THE COURT: NADDIS. Sorry. I missed that.

4 And that's what you understood in answering?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. SWETT:

8 Q. But when you talked about the policies, can you give me the
9 specific chapter and verse of those policies?

10 A. No, sir.

11 Q. Okay. But how is it that you are familiar with these
12 policies, then?

13 A. Well, we get training on it every year, so every year we
14 have to sign them, we have to sign the policy. I know it is in
15 the personnel manual. And when I was in OPR, we used that
16 manual quite a bit for violations of any kinds of standards of
17 conduct.

18 Q. Okay. And let me now ask you about the information that
19 agents use to investigate cases.

20 You were asked on cross-examination about where the
21 DEA can gather its information from, is that right?

22 A. Yes.

23 Q. And I believe there were a number of categories that you
24 went through with Mr. Mukasey, including private citizens,
25 right?

Naq2Cos5

Escobar - Redirect

1 A. That is correct.

2 Q. And other DEA cases?

3 A. Correct.

4 Q. And potential sources or cooperators, is that right?

5 A. Correct.

6 Q. Now, when you testified about that, that was all about
7 information coming into the DEA, right?

8 A. Correct.

9 Q. So before an arrest is made, what information, if any,
10 would the DEA share with a private citizen?

11 A. Probably none.

12 Q. And before an arrest is made, what sort of information
13 about its investigations would the DEA share with a source of
14 information?

15 A. Typically nothing.

16 Q. So when you were talking about the flow of information for
17 DEA cases, which direction does that information flow?

18 A. The flow is always coming to the agent. So it's coming
19 from the source or whoever is bringing that information to the
20 agent. The agent takes it in at that point, disseminates it
21 back through law enforcement channels.

22 Q. And you talked on direct about this concept of law
23 enforcement sensitive information. Can you just explain what
24 that is again?

25 A. Sure. It could be anything that has to do with an arrest,

Naq2Cos5

Escobar - Redirect

1 an indictment, case-specific information, targets of -- targets
2 of the investigation. It's anything that has -- that is
3 related to the case.

4 THE COURT: Just if I could just ask, just so it's
5 clear, when you said targets of the investigation, if you could
6 just explain to the jury what that means.

7 THE WITNESS: Sure. So target of the investigation is
8 somebody who we believe has committed a narcotics violation.
9 So those are what we would consider our target of the
10 investigation. So we would investigate that person to see if
11 there is any wrongdoing and then either move towards an
12 indictment or arrest or dispel the information and move on with
13 it.

14 BY MR. SWETT:

15 Q. So, again, in your 20-some-odd career as a DEA agent, what
16 information from NADDIS, if any, have you ever shared with
17 defense attorneys?

18 A. None.

19 Q. What information, if any, from NADDIS have you shared with
20 private investigators?

21 A. None.

22 Q. What information, if any, about forthcoming arrests have
23 you shared with defense attorneys?

24 A. None.

25 Q. Same question for private investigators.

Naq2CoS

Escobar - Recross

1 A. None.

2 MR. SWETT: No further questions.

3 THE COURT: Thank you. Anything further?

4 MR. MUKASEY: Very briefly.

5 RECROSS EXAMINATION

6 BY MR. MUKASEY:

7 Q. Special Agent Escobar, you have had occasion to tell a
8 defense attorney, hey, your guy's got a problem, and this is
9 what it is, and you would tell a defense attorney that to
10 encourage him to come in and cooperate, is that correct?

11 A. I don't recall doing that.

12 Q. Okay. Can I -- did you give a statement in connection with
13 this matter on November 18, 2019?

14 A. Yes.

15 Q. May I refresh your recollection --

16 A. Sure.

17 Q. -- if you don't remember?

18 A. Sure.

19 Q. Just for the witness and the government, can you put up
20 3517-003, page 31, and you can start at line 3. Read it
21 silently to yourself, and I would just ask --

22 A. Yes.

23 Q. -- does that refresh your recollection that, on occasion,
24 you would tell a defense lawyer, hey, your guy, your client has
25 a problem, to encourage him to come in and cooperate?

Naq2CoS

1 A. Yes, that is correct.

2 Q. Thank you.

3 THE COURT: Anything further, Mr. Gainor?

4 MR. GAINOR: No, your Honor.

5 THE COURT: Anything further, Mr. Swett?

6 MR. SWETT: No, your Honor.

7 THE COURT: Thank you. You may step down, sir.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 THE COURT: Ms. Deininger, are you up next?

11 MS. DEININGER: I am. The government calls Inspector
12 Steven Miller.

13 THE COURT: All right.

14 MR. MUKASEY: Your Honor, this is the witness that I
15 handed the document to you about earlier.

16 THE COURT: Yes. Thank you.

17 (Pause)

18 STEVEN MILLER,

19 called as a witness by the government,

20 having been duly sworn, testified as follows:

21 THE COURT: Ms. Deininger.

22 MS. DEININGER: Thank you.

23 Before we begin, I just would like to first read in a
24 stipulation. So it's Government Exhibit S4. If there is no
25 objection, we will have it published for the jury as well.

Naq2CoS

1 MR. MUKASEY: No objection.

2 MR. GAINOR: No objection.

3 MS. DEININGER: I'm going to read starting at
4 paragraph 1:

5 "Government Exhibits 101, 104 through 113B, 116 and
6 120 are records from the Drug Enforcement Administration. The
7 government exhibits listed above consist of records that were
8 kept and maintained in the course of regular practice of the
9 regularly conducted business activity of the entities described
10 above and were made at or near the time of the matters set
11 forth in the records by a person, or from information
12 transmitted by a person, with knowledge of the matters set
13 forth therein."

14 On the next page it says, "It is further stipulated
15 and agreed that Government Exhibits 101, 104, 106A, and 107
16 through 113B, 116 and 120 and this stipulation be admitted in
17 evidence at trial."

18 At this time the government would like to offer into
19 evidence Government Exhibits -- the stipulation and Government
20 Exhibits 101, 104, 106A, 107, 110, 111, 113A, 113B, and 120.

21 THE COURT: They are admitted.

22 MS. DEININGER: Thank you.

23 (Government's Exhibits S4, 101, 104, 106A, 107, 110,
24 111, 113A, 113B, 120 received in evidence)

25 MS. DEININGER: The government would also like to

Naq2CoS

Miller - Direct

1 offer into evidence, pursuant to stipulation S8, which was the
2 cell phone excerpt stipulation Mr. Swett read, Government
3 Exhibits 339, 341, 344, 345, 347, 349, 351, 354, 396, 1001,
4 1003, 1020, 1020B, 1034, 1034A, 1034B, and 1034C.

5 THE COURT: They are admitted.

6 MS. DEININGER: Thank you.

7 (Government's Exhibits 339, 341, 344, 345, 347, 349,
8 351, 354, 396, 1001, 1003, 1020, 1020B, 1034, 1034A, 1034B,
9 1034C received in evidence)

10 DIRECT EXAMINATION

11 BY MS. DEININGER:

12 Q. Good afternoon, Inspector Miller.

13 A. Good afternoon.

14 Q. Where do you work?

15 A. I work at the Drug Enforcement Administration, the Office
16 of Professional Responsibility.

17 Q. And how long have you worked with the DEA?

18 A. Approximately 16 years.

19 Q. And what's your current title?

20 A. Again, I'm inspector with the Office of Professional
21 Responsibility.

22 Q. What is the Office of Professional Responsibility?

23 A. The Office of Professional Responsibility is a unit that's
24 attached to headquarters and we investigate instances of
25 employee misconduct and policy violations by DEA employees.

Naq2CoS

Miller - Direct

1 Q. And how long have you been an inspector in that group?

2 A. Since January of this year.

3 Q. What are your general roles and responsibilities as an
4 inspector in the Office of Professional Responsibility?

5 A. Again, we primarily investigate DEA misconduct and policy
6 violations by its employees.

7 Q. And can you just walk me through the roles you held at the
8 DEA before your current position?

9 A. Sure. Once I completed the DEA academy, I was assigned to
10 the New York Field Division up until 2013, when I transferred
11 to the Washington, D.C. field division. In 2016 I then
12 transferred to the Newark, New Jersey field division. In 2018,
13 I was promoted to a supervisory special agent, and then in
14 2023, in January, I took the headquarters position and became
15 an inspector with OPR.

16 Q. So I believe you said between 2007 and 2018 you held roles
17 as special agent in various different offices, correct?

18 A. That's correct.

19 Q. And as a special agent, generally what were your roles and
20 responsibilities?

21 A. As a special agent you primarily identify, infiltrate,
22 investigate, disrupt and dismantle drug trafficking and money
23 laundering organizations.

24 Q. And then in 2018 you said you became a supervisory special
25 agent. Are you still considered a special agent when you

Naq2CoS

Miller - Direct

1 become a supervisor?

2 A. Yes.

3 Q. Okay. And how did your roles and responsibilities change
4 at that time, if at all?

5 A. So primarily as a supervisor you now supervise those agents
6 who are disrupting and dismantling money laundering and
7 drug-trafficking organizations.

8 Q. All right. I want to turn to a different topic.

9 Are you familiar with something called NADDIS?

10 A. Yes.

11 Q. And what is NADDIS?

12 A. NADDIS stands for the Narcotics and Dangerous Drugs
13 Information System. It is a data index and collection system
14 that we use in the DEA.

15 Q. And what types of information does NADDIS contain?

16 A. NADDIS will contain information that we garner from our
17 investigations, such as, names of subjects, targets, addresses,
18 license plate numbers, phone numbers. Anything investigative
19 that we glean from our time out in the field that's placed into
20 reports, is subsequently put into NADDIS.

21 Q. Does it also contain the reports themselves that you have
22 mentioned?

23 A. Yes.

24 Q. And who has access to NADDIS?

25 A. Certain personnel within DEA.

Naq2CoS

Miller - Direct

1 Q. And what personnel in general have access to NADDIS?

2 A. The people who are qualified, have the appropriate
3 clearances have access to NADDIS.

4 Q. What type of clearances do you need?

5 A. As a special agent you receive a top secret clearance.

6 Q. Does anyone outside of DEA have access to NADDIS?

7 A. No.

8 Q. And how is NADDIS accessed?

9 A. NADDIS is accessed through our DEA intranet. What you
10 basically do is you log in to your computer and you access an
11 intranet which is just utilized by DEA personnel. You go to a
12 program called Concorde, and then Concorde has a list of links,
13 hyperlinks that you can go to. You search for the hyperlink on
14 the left-hand side that says search 2.0 and that will take you
15 to NADDIS.

16 Q. We will probably walk through that in just a minute, but I
17 wanted to ask you was the information within NADDIS public?

18 A. No.

19 Q. Where does that information come from?

20 A. Again, that's gleaned from our investigations and that can
21 comprise of information that we may receive from confidential
22 sources, information that we generate on our own, information
23 that we receive from other law enforcement sources as well.

24 Q. I would like to show, just for the witness and counsel,
25 Government Exhibit -- what is marked as Government Exhibit 117.

Naq2CoS

Miller - Direct

1 Inspector Miller, can you see that on your screen?

2 A. I can now.

3 Q. What is this?

4 A. That is the website or the intranet site that I referred
5 to. After you access the DEA intranet, you go to the Concorde
6 website, and then you will see Concorde applications on the
7 left-hand side.

8 Q. To your knowledge have there been any significant changes
9 to this interface since November 2019?

10 A. Not to my knowledge.

11 Q. So this is substantially how this system would have
12 appeared in 2018 and 2019?

13 A. Yes.

14 MS. DEININGER: Government offers Government Exhibit
15 117 into evidence.

16 MR. MUKASEY: Objection.

17 THE COURT: Objection or no objection?

18 MR. MUKASEY: Objection.

19 THE COURT: I'm going to overrule the objection and
20 allowed it. Exhibit 117 is admitted.

21 (Government's Exhibit 117 received in evidence)

22 MS. DEININGER: If you can publish for the jury.

23 BY MS. DEININGER:

24 Q. Inspector Muller, if we look at the very top of this
25 exhibit there is a green line with white lettering that says

Naq2CoS

Miller - Direct

1 "DEA Sensitive But Unclassified." Sorry, Ms. Pierre, further
2 up above that. There is the line that says "DEA Sensitive But
3 Unclassified"?

4 A. Yes.

5 Q. Inspector Miller, what does that refer to?

6 A. So that's part of the DEA intranet. That is accessible to
7 DEA employees, so it's only accessible by DEA employees, so
8 it's --

9 Q. And what does it mean that the information is DEA sensitive
10 but unclassified?

11 A. Again, you can only access these websites if you are a DEA
12 employee and have the appropriate clearances.

13 Q. Again, what clearances would you need?

14 A. This is just for standard DEA employees, so any DEA
15 employee can access that intranet.

16 Q. Slightly below that there is another green line with white
17 lettering this one says DEA/Law Enforcement Sensitive?

18 A. Again, that is accessible to DEA employees with the
19 appropriate clearances, but it's law enforcement sensitive,
20 which means that you would need the appropriate clearances to
21 access these websites or this information.

22 Q. And how does this differ from what we saw that we were
23 looking at a moment ago -- what's the different between --
24 strike that.

25 What's the difference between DEA sensitive which we

Naq2CoS

Miller - Direct

1 saw on the top line and DEA/law enforcement sensitive which we
2 are looking at here?

3 A. So the DEA law enforcement sensitive banner, everything
4 underneath that is only accessible to certain DEA personnel,
5 not every DEA personnel.

6 Q. And how -- is this the screen where you would access NADDIS
7 from?

8 A. Yes.

9 Q. And how would you do that?

10 A. So on the left-hand side are the applications. You scroll
11 down to -- on the application side in that sort of grayish blue
12 box and you -- there is a tab that will say search 2.0
13 underneath -- in alphabetical order. You can't see it. It's
14 cut off on the bottom there. But it would be underneath those
15 applications beginning with the letter P.

16 Q. We can't see that link here.

17 A. Right.

18 Q. But you would normally see that in alphabetical order
19 farther down on the screen?

20 A. That's correct.

21 Q. We can take this down. I would like to publish just for
22 the witness and counsel Government Exhibit 118.

23 Inspector Miller what is this?

24 A. After you click on search 2.0 this is the screen that
25 appears.

Naq2CoS

Miller - Direct

1 MS. DEININGER: The government would like to offer
2 Government Exhibit 118 into evidence.

3 THE COURT: 118 is admitted.

4 MR. MUKASEY: Judge, may I just briefly *voir dire* the
5 witness?

6 THE COURT: What do you want to know.

7 MR. MUKASEY: Whether this screen in the form it's
8 displayed now was the exact way that it looked in 2018 and
9 2019.

10 THE WITNESS: More or less, yes.

11 MR. MUKASEY: More or less?

12 THE WITNESS: I don't know. So, for instance, on the
13 previous screen there might have been updates made to certain
14 programs. It might be -- instead of version 2.0, it might have
15 been version 1.0 in 2018. I can't speak to that.

16 MR. MUKASEY: But you are not positive as to whether
17 this screen that's up there now, Government Exhibit 118, is --

18 THE WITNESS: No. This is what you would see in 2018.

19 MR. MUKASEY: Exactly the same?

20 THE WITNESS: Substantially the same.

21 MR. MUKASEY: Thank you.

22 MS. DEININGER: Is the exhibit admitted?

23 THE COURT: It is admitted, yeah.

24 (Government's Exhibit 118 received in evidence)

25 BY MS. DEININGER:

Naq2CoS

Miller - Direct

1 Q. What are we looking at?

2 A. After you hit the link to search 2.0, this screen would
3 appear.

4 Q. Again, in the top third of the screen, there is a green bar
5 with white lettering that says DEA. What does that say?

6 A. "DEA sensitive but unclassified."

7 Q. And what does it say below that under the search bar or
8 under the website? Yeah, right there. Sorry.

9 A. "DEA/law enforcement sensitive."

10 Q. Again, what does DEA/law enforcement sensitive mean?

11 A. Again, that's accessible or that website is accessible to
12 certain DEA personnel with the appropriate clearances.

13 Q. And then can you just read for me what it says below
14 "NADDIS security and warning notice."

15 A. Sure. The first bullet "NADDIS is for official use only."

16 Q. I'm sorry. If you could stop right there, actually. What
17 does "official use" mean? What's your understanding?

18 A. So my understanding of official use is only for purposes
19 related to the investigation that you are currently engaged in.

20 Q. Okay. You can keep reading.

21 A. " browsing through NADDIS is prohibited. Access to NADDIS
22 is for authorized purposes only."

23 Q. You can pause there. Again, what's your understanding of
24 what authorized purposes are here?

25 A. Authorized purposes are purposes that, for lack of a better

Naq2CoS

Miller - Direct

1 term, are authorized. So an authorized purpose would be in
2 furtherance of your investigation or to conduct your
3 investigations, your DEA investigations, you would access
4 NADDIS.

5 Q. Okay. You can keep going.

6 A. "Use of NADDIS for personal or unauthorized use is
7 prohibited. Access to NADDIS is based on a *bona fide*
8 need-to-know basis."

9 Q. If you can stop there, what was your understanding of what
10 it means by *bona fide* need-to-know basis?

11 A. So when you access NADDIS, for example, a need-to-know
12 basis would again be related to your investigative efforts or
13 DEA case, information that you would need to know in
14 furtherance of that investigation. A *bona fide* use would be
15 what I just outlined. Something that isn't *bona fide* would be
16 if you put your neighbor's name into NADDIS and you just want
17 to see who lives nextdoor to you, that's not a *bona fide* use of
18 NADDIS.

19 Q. Okay. You can keep going, the line that starts "use of
20 NADDIS."

21 A. "Use of NADDIS to satisfy personal or nonwork-related
22 curiosity is prohibited. No person has a right to access
23 NADDIS information solely by virtue of title or position.
24 Querying NADDIS records of individuals and businesses for
25 personal reasons is prohibited. Employees, contractors,

Naq2CoS

Miller - Direct

1 consultants, TFOs, TFAs, military, and other law enforcement
2 agency personnel of the United States government are bound by
3 the requirements of the Privacy Act."

4 Q. Okay. You can stop there.

5 There is a reference here to TFOs. Do you know what
6 that is?

7 A. TFO stands for task force officer.

8 Q. So what do you do if you want to move forward and access
9 the NADDIS database after you get to this NADDIS security and
10 warning notice screen?

11 A. So on the right-hand side of the screen are the radio
12 buttons that you can indicate what the search is being
13 conducted on behalf of. You choose one of those radio buttons,
14 and it takes you to the next screen.

15 Q. Can you explain these three options for me briefly?

16 A. Sure. "Self" is pretty self explanatory. You are using
17 NADDIS to search on behalf of yourself, your investigation.

18 "Firebird user" is anyone who has access to Firebird.
19 So, for instance, if a coworker is out on the street and they
20 want you to run somebody in NADDIS, you could do it under that.

21 Q. And what is -- I'm sorry, what is Firebird?

22 A. Firebirds are our internal system, our internal DEA system.
23 It's just the name of the application.

24 Q. So it's another name for the intranet, basically?

25 A. Yeah, yeah.

Naq2CoS

Miller - Direct

1 Q. And what's a non-Firebird user?

2 A. Non-Firebird user would be a person who is not -- doesn't
3 have access to Firebird, so it's basically a request, it might
4 be a request at a local law enforcement personnel, could you
5 run this person in NADDIS.

6 Q. And --

7 A. We -- go ahead. I'm sorry.

8 Q. I think you started to address my question, but what are
9 some circumstances in which you would conduct a search on
10 behalf of a non-Firebird user, someone who themselves doesn't
11 have access to NADDIS?

12 A. So if you are working an investigation in conjunction with
13 another law enforcement agency, federal partner or local
14 partner, they may ask you -- they may come across something in
15 a case that you are working together like, hey, I came across
16 this license plate on surveillance. It's related to our case.
17 Could you run it into NADDIS and see what comes up? So that
18 would be an instance where it would be a non-Firebird user.

19 Q. Are there any limitations on your ability to run NADDIS
20 searches for a non-Firebird user?

21 A. In terms of when we can or cannot do it?

22 Q. Or what you can and cannot do it for.

23 A. Yeah, it has to be related to your DEA investigative
24 efforts.

25 Q. I would like to now show for the witness and counsel

Naq2CoS

Miller - Direct

1 Government Exhibit 119.

2 And Inspector Miller, what is this?

3 A. So that's the next screen after you hit one of those radio
4 buttons on the right-hand side of the previous screen. This
5 will now pull up.

6 Q. To your understanding, is this still substantially the same
7 format that it was in in 2018 and 2019?

8 A. It appears so.

9 Q. Government offers Government Exhibit 119 into evidence.

10 MR. MUKASEY: Same objection for the record.

11 THE COURT: Okay. 119 is admitted.

12 (Government's Exhibit 119 received in evidence)

13 MS. DEININGER: You can publish for the jury.

14 BY MS. DEININGER:

15 Q. So, again, Inspector Miller, what are we looking at?

16 A. So this is the actual search entry screen. So it functions
17 much in the way as like if you were to do a Google search. So
18 whatever you are searching, you enter into that box, which I
19 just highlighted, and you enter your search term in there, hit
20 the button search, and then the results should pull up.

21 Q. And so this is basically the NADDIS search screen, is that
22 correct?

23 A. Yeah, it will -- the search screen allows you to access
24 NADDIS records.

25 Q. Okay. Thank you.

Naq2CoS

Miller - Direct

1 And, again, do you see the green bar that says DEA/law
2 enforcement sensitive?

3 A. Yes.

4 Q. What does that apply to on the screen we are looking at?

5 A. Again, that screen is only accessible to certain DEA
6 personnel with the appropriate clearances.

7 Q. And does that apply as well to the records that can be
8 accessed through NADDIS?

9 A. Yes.

10 Q. So you said that the search bar works much like Google.
11 What sort of search terms can you generally used to search in
12 NADDIS.

13 A. So there is a -- if you look at the bar closely, it says,
14 for instance, you could do -- you could enter a name in there,
15 such as Sally Smith. You could enter a case number. You could
16 enter a license plate number. You can enter the tail number on
17 an airplane, addresses. Basically anything that you come
18 across as a result of your investigation, you can enter into.

19 Q. Do special agents receive training on how to use NADDIS?

20 A. Yes.

21 Q. And how do they receive that training?

22 A. First you receive training, you receive a block of training
23 at the DEA academy in Quantico, Virginia. You are basically
24 brought into a computer lab, everyone has a screen, and they
25 instruct you on how to use NADDIS, how to conduct searches in

Naq2CoS

Miller - Direct

1 it.

2 Q. And what other types of information are included in the
3 training on how to use NADDIS?

4 A. You are also instructed on when and why you should
5 disseminate that information and who you can disseminate it to.

6 Q. How frequently would a -- in your experience, how
7 frequently would a DEA special agent access NADDIS?

8 A. In my experience if you are an agent who is working on an
9 active investigation, you would access NADDIS several times a
10 week.

11 Q. And how about a supervisory special agent? Would their use
12 of NADDIS be different?

13 MR. MUKASEY: Objection. Foundation.

14 THE COURT: If you know. Do you know?

15 THE WITNESS: Yes.

16 THE COURT: You can answer.

17 A. As a supervisory special agent, your role has changed from
18 that of a field agent in that you are not -- in DEA you are not
19 conducting investigations, you are not conducting -- actively
20 conducting drug investigations, so your use would be less
21 frequent.

22 Q. Does the DEA maintain records regarding NADDIS use?

23 A. Yes.

24 Q. What sort of records does it maintain?

25 A. You can run an audit of a DEA NADDIS user.

Naq2CoS

Miller - Direct

1 Q. Would the -- what does the audit show?

2 A. The audit shows what that person is searching for in
3 NADDIS.

4 Q. So it shows the searches that they have run in the past?

5 A. That's correct.

6 Q. And are those records made at the time a NADDIS search is
7 conducted?

8 A. Yes.

9 Q. Are those records maintained by the DEA in the course of
10 its regularly conducted activity?

11 A. Yes.

12 Q. Are those NADDIS audit records regularly relied upon in the
13 DEA?

14 A. Yes.

15 Q. Are those NADDIS audit records something that are relied
16 upon in the investigative work conducted by the Office of
17 Professional Responsibility?

18 A. Yes.

19 Q. I would like to show what is -- just for the witness and
20 counsel, take a minute, what is four different exhibits.

21 One, the first one is marked as Government Exhibit
22 102. If you can just take a look at this, Inspector Miller,
23 what is this?

24 A. That is an audit log from NADDIS.

25 Q. And if we can look at Government Exhibit 103. Ms. Pierre,

Naq2CoS

Miller - Direct

1 if we can scroll to the top.

2 Inspector Miller, if you can just take a minute, what
3 is this?

4 A. A portion of an audit log from NADDIS.

5 Q. If we can pull up Government Exhibit 114.

6 Inspector Miller, what is this?

7 A. That's the same. It's an audit log from NADDIS.

8 Q. And Government Exhibit 115.

9 What is this?

10 A. Audit log from NADDIS.

11 MS. DEININGER: The government would offer Government
12 Exhibits 102, 103, 114, and 115 into evidence.

13 MR. MUKASEY: Objection. May we approach?

14 THE COURT: Yes.

15 (Continued on next page)

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Naq2CoS

Miller - Direct

1 (At the sidebar)

2 THE COURT: Sorry for the interruption. I know you
3 want to avoid sidebars.

4 This is something that we made a record on during the
5 course of this case. It is our inability to get the NADDIS
6 information that we have asked for and I think DEA's inability
7 to retrieve it. Most specifically, with respect to these
8 exhibits, I don't believe they qualify as business records
9 under 803(6) because they were created for purposes of this
10 litigation.

11 There is a case called *Palmer v. Hoffman*, Supreme
12 Court case, that holds that records that are created for the
13 purposes of a litigation do not satisfy business records. To
14 be honest, it was pre-Federal Rules of Evidence, but it does
15 talk about business records getting into evidence. So while
16 it's not under the Federal Rules, it does stand for the
17 proposition that documents that are created for purposes of a
18 litigation as these logs are, are not business records.

19 MS. DEININGER: I think the witness testified that the
20 underlying records themselves that are in audit logs are
21 created at the time the searches are run. They are maintained
22 by the DEA in the regular course of conduct. All that happens
23 is that a query runs for specific of those records to be pulled
24 out.

25 There is actually case on this in the Second Circuit,

Naq2CoS

Miller - Direct

1 in the Southern District, holding that those -- the records of
2 those queries are admissible as business records. It is the
3 same, honestly, as when we send a subpoena to a phone service
4 provider for a subscriber enforced for a specific number. They
5 run a query and give us everything that that phone number has
6 been subscribed to, and that is routinely admitted.

7 But Judge Rakoff recently addressed this in *United*
8 *States v. Booth*—it is 2022 WL 3139651—and held that "the only
9 actions taken in anticipation of litigation were to export
10 without alteration a subset of the data contained in voluminous
11 electronic databases such that only those records pertaining to
12 particular individuals were produced," and then admitted those
13 as a business record.

14 THE COURT: So how was this created? So this was --
15 are these screenshots or are these copies of spreadsheets that
16 are actually from database or what?

17 MS. DEININGER: I think there is a way in the database
18 to run a query for, say, every search that was run by John
19 Costanzo and it will generate a report. Two of these
20 spreadsheets are that.

21 The other two you could also run a query for, say give
22 me records of all searches that related to a specific name, and
23 the other two are that. We have asked for searches run for --
24 I would have to look at the exhibits to see what the names
25 were, but names that were run.

Naq2CoS

Miller - Direct

1 MR. MUKASEY: I believe they were curated for purposes
2 of this litigation and, as such, they are not created at or
3 about the time of the records reflected or the actions
4 reflected in the records. They are actually created way later
5 for purposes of this.

6 THE COURT: But how is it different from contacting a
7 phone provider, e-mail provider, and saying give me all the
8 documents that correspond to this range or this inquiry and
9 then you get a subset of the data?

10 MR. MUKASEY: I haven't heard that these are created
11 at about the time of the searches. I don't know if they are or
12 they are not, but they were curated, as I understand it, for
13 these purposes, not in the normal course of business
14 documenting what happened at the time it happened.

15 THE COURT: Well, the underlying information is
16 clearly a business record. You are saying the way it was
17 extracted makes them not a business record.

18 MR. MUKASEY: And the way it is presented, correct.

19 THE COURT: I think it sounds like what Judge Rakoff
20 addressed, and I'm going to overrule the objection.

21 (Continued on next page)
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Naq2CoS

Miller - Direct

1 (In open court)

2 MS. DEININGER: Your Honor, we might ask your
3 indulgence. I'm happy to keep going on, but it also seems like
4 it might be a good time for a brief break.

5 THE COURT: Yeah. Why don't we take a ten-minute
6 bathroom break.

7 Please leave your note pads on your chairs. You are
8 not yet deliberating. We will recess for ten minutes. We will
9 be in recess for ten minutes.

10 (Recess)

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NAQVCOS6

Miller - Direct

1 THE COURT: I've been looking at the proposed
2 instruction. I'm not necessarily opposed to saying something
3 about the distinction between violation of DEA policies and the
4 elements of the charged crimes. I don't think this does it. I
5 don't know if there's a way to do it without referencing how
6 it's relevant to official duty. And once you reference
7 official duty, you're starting to define the crimes and it just
8 gets -- I just think it gets confusing. So you know, I'm
9 inclined to just explain it in the instructions.

10 MR. MUKASEY: The final instructions.

11 THE COURT: Yes, the final instructions.

12 MR. MUKASEY: Thank you for considering it.

13 THE COURT: Okay. Are you all ready?

14 (Jury present)

15 THE COURT: Please be seated, ladies and gentlemen.

16 Okay. Ms. Deininger.

17 MS. DEININGER: Thank you.

18 Ms. Pierre, can we show just for counsel and the
19 witness what is marked as Government Exhibit 704A.

20 THE COURT: Just to be clear, you had moved those four
21 exhibits.

22 MS. DEININGER: Yes. If it isn't already, we are
23 offering into evidence Government Exhibit 102, 103, 114, and
24 115.

25 THE COURT: They are admitted.

NAQVCOS6

Miller - Direct

1 (Government's Exhibits 102, 103, 114, 115 received in
2 evidence)

3 MS. DEININGER: Thank you.

4 And now we're showing what's marked as Government
5 Exhibit 704A.

6 Q. Inspector Miller, do you recognize this?

7 A. Yes.

8 Q. What is it?

9 A. It is a summary chart provided to me by the U.S. Attorney's
10 Office.

11 Q. Did you review the record used to prepare this chart?

12 A. Yes.

13 Q. What types of records generally were those?

14 A. I reviewed the NADDIS audit logs, as well as a few pages of
15 text message conversations.

16 Q. And who provided you with those records?

17 A. United States Attorney's Office.

18 Q. Does the information in Government Exhibit 704A fairly and
19 accurately reflect the information in those underlying records
20 you just described?

21 A. Yes.

22 MS. DEININGER: The government offers Government
23 Exhibit 704A into evidence.

24 MR. MUKASEY: With the previously stated objection on
25 the record.

NAQVCOS6

Miller - Direct

1 THE COURT: Noted.

2 And 704A is admitted as a summary chart.

3 (Government's Exhibit 704A received in evidence)

4 MS. DEININGER: Okay. Ms. Pierre, you can publish for
5 everyone.

6 Q. Inspector Miller, can you just walk me through -- I'd like
7 to ask you to just walk me through the columns and explain what
8 this summary chart shows. So for example, column A says
9 request date and time. What does that refer to?

10 A. So that refers to the text message conversations that I
11 reviewed. That was the time that a request was made to search
12 a subject in NADDIS.

13 Q. And what does the next column "requestor" refer to?

14 A. That is the person -- based upon my review of the text
15 message conversations, is the person who is requesting the
16 search in NADDIS.

17 Q. And what does -- and generally, who was making these
18 requests?

19 A. 23 columns and Manuel Recio was making the requests.

20 MS. DEININGER: And we scroll down a bit on the page.

21 Q. There is one line in blue where the name of the requestor
22 is David Macey. Was there a different requestor in that
23 instance?

24 A. Yes. David Macey.

25 Q. And who was receiving these requests?

NAQVCOS6

Miller - Direct

1 A. John Costanzo.

2 Q. And so we go back up, the third column is titled name run
3 in NADDIS. What does that column show?

4 A. The requestor is asking John Costanzo to run that subject
5 name in NADDIS.

6 Q. And in the fourth column it says NADDIS search date and
7 time. What does that show?

8 A. That shows when John Costanzo ran that subject name in
9 NADDIS.

10 Q. And again, we scroll down in this table. There are two
11 lines here near the bottom where there's a notation that says:
12 Ran by Edwin Pagan. What does that mean?

13 A. That shows -- that indicates that TFO Pagan ran those
14 subject names in NADDIS.

15 Q. In those two cases, the NADDIS search was not run by John
16 Costanzo?

17 A. That is correct.

18 Q. And in all of these other instances, were you able to
19 confirm from the DEA audit records that John Costanzo had run a
20 NADDIS search for these names?

21 A. Yes.

22 Q. And generally, what did you learn from your review of the
23 text message communications and the NADDIS audit logs
24 referenced here?

25 A. As a result of my review of those documents, the requestor,

NAQVCOS6

Miller - Direct

1 again, majority of the times was Manuel Recio requested a name
2 to be searched in NADDIS at a particular date and time. Made
3 that request to John Costanzo, and then shortly in time
4 thereafter the request was made, the audit log shows that John
5 Costanzo ran those names in NADDIS.

6 Q. And what do you mean by "shortly in time thereafter"?

7 A. Could be a day later, it could be the same day, maybe a few
8 minutes, hour later.

9 Q. Do you know if this chart reflects all of the names that
10 Manuel Recio asked John Costanzo to run in NADDIS?

11 A. Do not.

12 Q. Do you know who chose which requests and searches to
13 include in this summary chart?

14 A. U.S. Attorney's Office.

15 Q. If John Costanzo had another DEA employee run a NADDIS
16 search for him, would that show up in a NADDIS audit report for
17 John Costanzo's NADDIS activity?

18 MR. MUKASEY: Objection.

19 THE COURT: Overruled.

20 A. No, it would not.

21 Q. I want to look at some of the examples of the text message
22 requests that are referred to in this summary chart.

23 MS. DEININGER: Ms. Pierre, you can pull up side by
24 side Government Exhibit 704A, which we're looking at now, and
25 then also Government Exhibit 1001, which is in evidence.

NAQVCOS6

Miller - Direct

1 We're just having a little bit of a technical issue.

2 Q. Okay. Here we go. All right. So and Inspector Miller,
3 first looking at just the top of Government Exhibit 704A, which
4 is on the left-hand side, what are the names in the top two
5 lines of that chart?

6 A. The names of the NADDIS or the requestor?

7 Q. The names run on NADDIS, yes.

8 A. First line is Marco Antonio Flores Moreno.

9 Q. And what's the name in the next line?

10 A. Edgar Marval.

11 Q. Okay. And so now we look at Government Exhibit 1001, which
12 is on the right. Can you read what it says at the top there
13 for me, the top three lines.

14 A. Native iMessage thread. Manny Recio, 305-796-7463 (gray).
15 Johnny Costanzo, 786-271-2480 (green).

16 Q. Okay. I want to read through this. If you can read the
17 messages from Manny Recio in gray; I'll read the ones from
18 Johnny Costanzo in green.

19 Before we do that, what is the date of these text
20 messages?

21 A. November 13th, 2018.

22 Q. All right. Let's -- if you can start reading.

23 MR. MUKASEY: Judge, I'm going to object to the form.
24 If the witness wants to read what's in evidence, but the back
25 and forth role play I'm objecting to.

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Miller - Direct

1 THE COURT: I think it's fine. Overruled.

2 Q. You can read the text messages in gray.

3 A. 1151, Marco Antonio Flores Moreno. Pedro Antonio Becerra
4 Cardenas Ciudadano Columbia.

5 Q. Flores was a general, was just appointed to some minister
6 of some shit.

7 A. John, anyone have a case on Floes, then Flores, next line.

8 Q. Which one?

9 A. Marco Antonio Flores Moreno.

10 Q. Oh, not that I saw initially. Call you in a few?

11 A. He may be associated with a company named US D&D
12 International.

13 MS. DEININGER: And we can close that out.

14 And now I'd like to pull up next to Government Exhibit
15 704A, Government Exhibit 339.

16 Q. Okay. Inspector Miller, do you see, looking at Government
17 Exhibit 704A on the left, what name it says shows as requested
18 on February 19th, 2019 at 10:40 a.m.?

19 A. Karen Trujillo Suarez.

20 Q. So let's go. And now let's go over to Government Exhibit
21 339. And again, what does it say on the top three lines?

22 A. Telegram chat thread JC 713-578-845 (green). Manny Recio,
23 707-911-750 (gray).

24 Q. I'm going to again read the messages from JC in green, and
25 if you can read the messages from Manuel Recio in gray.

NAQVCOS6

Miller - Direct

1 Guillermo Fuentes is involved.

2 A. Nice.

3 Q. Why else?

4 A. I just need case agent in D.C. Call me and give me a
5 summary on his NADDIS.

6 Q. And there's five outgoing calls of varying durations.

7 A. I'll get you a decision before noon.

8 Q. Thanks. Joshua Cliff 5713220/608.

9 MS. DEININGER: Let's continue, Ms. Pierre.

10 Q. Call Fuentes first. Nothing on Karen Trujillo Suarez.
11 Mara Hewitt 404-893-7487 Atlanta contact for German.

12 A. Great.

13 MS. DEININGER: Let's go back to Government Exhibit
14 704A. And Ms. Pierre, you can pull up next to it this time
15 Government Exhibit 341.

16 Sorry.

17 Q. All right. So we're looking on the left-hand side at
18 Government Exhibit 704A. Can you read the names for me that
19 were requested on April 28th, 2019?

20 A. Paola Tapiero Portilla. And then Ligio Geraldo Bellar
21 Kazar.

22 Q. Who does it say requested that these names be searched?

23 A. Both requests were made by Manuel Recio.

24 Q. And then again, based on your review of the NADDIS audit
25 records, did John Costanzo conduct a NADDIS search for these

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1 names?

2 A. Based upon the audit, yes.

3 Q. So let's now look at Government Exhibit 341, which is on
4 the right. And if you can again read the three lines at the
5 top.

6 A. Telegram chat thread. Manny Recio 70791750 (gray). JC
7 713-578-845 (green).

8 Q. If you can again read the text messages from Manny Recio
9 which are in gray; I will read the ones from JC that are in
10 green.

11 A. Tomorrow can you run Paola Tapiero Portilla, Ligio Geraldo
12 Bellar Kazar.

13 Q. What time do you get in?

14 A. Around five. John, we're about to take this shit to
15 another level. I'm starting to make some in roadside.
16 Inroads.

17 Q. Okay. Dave is going to drop off the pass to his building.
18 I will have it. We also need to talk, so make time.

19 A. I'll pass it by. Can you look up the names I gave you.

20 There's a missed call.

21 Q. And there's an outgoing call.

22 MS. DEININGER: I think that's the end of this one;
23 correct? Okay. So we can close -- all right. We can close
24 that down.

25 If we go back to Government Exhibit 704A and pull up

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1 next to it Government Exhibit 341 -- sorry, that's the one we
2 were just looking at. Okay. Sorry. Instead of 341,
3 Government Exhibit 1020.

4 Q. All right. So Inspector Miller, on the left-hand side,
5 looking at Government Exhibit 704A, can you read the names on
6 the last three lines of that summary chart? Of the names that
7 are being requested to be run in NADDIS.

8 A. The first one is Roni Alejandro Caballero Martinez. Second
9 one is Aler Baldomero Samoya -- Samayoa Recinos. And then the
10 third one is Edwin Benigno.

11 Q. And who is -- who does this chart show is making that
12 request?

13 A. Manuel Recio.

14 Q. And when is it being made?

15 A. November 11th, 2019.

16 Q. And were you able to determine if John Costanzo had
17 searched for these names in NADDIS?

18 A. Based upon the audit, yes.

19 Q. And when had he run that search?

20 A. The following day, November 12th, 2019.

21 Q. So now we go look at Government exhibit 1020.

22 Can you read what it says at the top?

23 A. WhatsApp messages thread. Manny Recio, 13057967463 (gray).
24 Johnny Costanzo, 17862712480 (green).

25 Q. It shows that the top of this message there are two

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1 attachments. I'd like to pull up one of those.

2 MS. DEININGER: Ms. Pierre, in place of Government
3 Exhibit 704A, can you pull up 1020B.

4 Okay. Thank you.

5 Q. So Inspector Miller, at the bottom of the attachment to
6 this text message, Government Exhibit 1020B, is there -- is
7 there a name?

8 A. Two names, yes.

9 Q. And what are those names?

10 A. Aler Baldomero Samayoa Recinos and Roni Alejandro Caballero
11 Martinez.

12 Q. And if we look back to the WhatsApp message thread in
13 Government Exhibit 1020, who is sending those attachment?

14 A. That attachment is being sent by Manny Recio.

15 Q. To whom?

16 A. John Costanzo.

17 Q. Okay. I'd like to now read the messages below the
18 attachments. If you can again read the messages from Manny
19 Recio in gray; I'll read the ones from Johnny Costanzo in
20 green.

21 A. The two attachments sent. And then John, tomorrow let me
22 know about this guy.

23 Q. Okay, Papo. Edwin Benigno agents are Arron Padgit. This
24 guy is affiliated with transport Indios Barrera. Get you the
25 agent's number. Aler is Peter Maher, Memphis. Good friend of

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1 the GS nugget. Pete's number is 571-362-2278. I believe you
2 talked to him in other shit before also. SOD Brentwood has a
3 piece. The rest of the targets nada.

4 We can just go back to Government Exhibit 704A now.

5 All right. So Inspector Miller, looking at Government
6 Exhibit 704A, how many requests for NADDIS searches in total
7 are reflected in this chart? I can give you a minute to look
8 through it if you need to.

9 A. 23.

10 Q. Okay. Was each of those a request for a different name to
11 be searched in NADDIS?

12 A. Yes.

13 Q. And what was the -- and in each of those cases was the name
14 searched in NADDIS by either John Costanzo or, in two
15 instances, by Edwin Pagan?

16 A. Based upon the audits, yes.

17 Q. And what was the date range of when those native searches
18 were run?

19 A. November of 2018 to November 2019.

20 Q. Okay. And again, you mentioned before that you, I think,
21 generally found that the NADDIS searches were run near in time
22 to when the text message requests that you reviewed; correct?

23 A. That's correct.

24 Q. So I just want to make sure we review a few of those.

25 So just looking back at the first top line, the

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1 second -- the second line from the top regarding Edgar Marval,
2 we looked at this before for a second. But when does the
3 summary chart show that the text message request was received?

4 A. The request was made on November 14, 2018 at 3:48 p.m.

5 Q. And then when did it show that the NADDIS date and time
6 was?

7 A. The following day, November 15, 2018, at 10:31 a.m.

8 Q. And just for another example, if we go down three more
9 lines, it says there was a search run for Victor Eduardo Lopez
10 Cuellar. When does it say that John Costanzo received that
11 request?

12 A. November 29, 2018 at 9:35 a.m.

13 Q. When does it show that that NADDIS search was run?

14 A. November 29, 2018 at 10:47 a.m.

15 Q. And again, was that -- that was a NADDIS search that was
16 run by John Costanzo?

17 A. Correct.

18 Q. Okay. Can NADDIS audit logs show you what type of files a
19 DEA employee accessed after conducting a search?

20 A. Yes. So to be more specific, it can show you -- the audit
21 log can show you what type of information they accessed in
22 NADDIS based upon an initial search. So for instance, if you
23 type in a subject and certain records pop up, there might be
24 records that show that a vehicle is attributed to him or an
25 address, you could click on that vehicle and address.

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1 Q. I want to look at an example of how -- what the NADDIS
2 audit logs show us for these searches. Before we do that, if
3 we can just look at the top line of this chart again.

4 Again, what is the name in the very first line that
5 was run on NADDIS?

6 A. The name of the chart? I'm sorry.

7 Q. The name in the column that says name run in NADDIS, the
8 first one at the top.

9 A. Marco Antonio Flores Moreno.

10 Q. And again, this is a request that came from Manuel Recio,
11 right?

12 A. That's correct.

13 MS. DEININGER: Ms. Pierre, we can publish what's in
14 evidence as Government Exhibit 103.

15 Q. Inspector Miller, again, what is this?

16 A. That's the NADDIS audit log run for John Costanzo.

17 Q. Okay. And generally, what does it show?

18 A. So it will show the user name, the person who's accessing
19 NADDIS, the time and date that they have accessed it, who
20 they're searching for, and the search terms that are entered,
21 the results received; and if there were any further sort of
22 clicks on that subject, the results received.

23 Q. So specifically looking at column A, user name, what is
24 that?

25 A. John A. Costanzo.

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1 Q. And what does user name refer to?

2 A. That is the person who is using NADDIS.

3 Q. And what about column C activity date, what does that tell
4 you?

5 A. That's the date and time that that person is using NADDIS.

6 Q. Okay.

7 MS. DEININGER: If we can scroll to the right to
8 column F.

9 Q. What does action type tell you?

10 A. It's showing you what that person is doing in NADDIS.

11 Q. Go ahead.

12 A. In this instance here, line No. 2 shows search. So a
13 search term was entered into the search box that I spoke about
14 earlier, sort of functions like a Google search box. Then that
15 pulls up results. Then that third or the subsequent line show
16 click. That shows that the user is clicking on one of the
17 results that was received in relation to that search.

18 Q. And column G action location, what is that?

19 A. That is just like I alluded to, so that's initially the
20 search box where it says Concorde search. And it pulls up all
21 the links that are generated from entering the search term into
22 that search box.

23 Q. And then a little bit more to the right, column K is
24 navigated URL. What does that show?

25 A. So those are the results that you receive. So for

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1 instance, the second line shows that the name that was entered
2 or the search term that was entered; and then what the person
3 clicked on after the search term generated links to it.

4 So in line 3 it says identifying numbers. In line 7,
5 it will say remarks. So once you enter a search term into the
6 box, it will generate certain information and links that you
7 can click on. They are all classified as either identifying
8 numbers, remarks, vehicles, case numbers. You can click on
9 those and see if there's any further information under those
10 sort of subheadings.

11 Q. And one last one, column L, which is right to the right,
12 this says it's labeled additional search data. What does that
13 show you?

14 A. That's -- that's the -- again, that's the search form.
15 This is sort of the sources where the information is generated
16 from. So for instance, if you look on 14, the name was
17 entered. They searched sort of a compilation of information
18 that was garnered from tolls, from our PTAR system, our
19 priority targeting system; ESS, which is a system which will
20 associate addresses and other sort of public information with
21 that search term. So these are all the sources that that
22 search term has garnered for it to provide information.

23 So for instance, you enter the name Oscar Orobio,
24 O-R-O-B-I-O, and then any information on Oscar, if there is
25 any, is coming from these sources; so ESS, from tolls, and that

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1 information is generated in the NADDIS record.

2 Q. You just mentioned before that one of the sources was
3 tolls. What are tolls?

4 A. Tolls are information garnered from telephone tolls. So
5 when you run a toll history on someone on a phone number that
6 may be attributed to this person, it will show like tolls, it
7 might show phone numbers that are associated with this person
8 based upon toll documents or toll records.

9 Q. And toll records are the same thing as call records, they
10 show calls incoming, outgoing?

11 A. Call detail records, toll records, yeah. They are
12 generally interchangeable.

13 MS. DEININGER: So we go back to column A. And if we
14 can scroll down to lines 357 to 364.

15 Q. Looking at lines 357 to 364, who does it show conducted
16 these searches?

17 A. User name is John Costanzo.

18 Q. And when were they conducted?

19 A. November 15, 2018 at approximately 10:38 a.m.

20 Q. And if we scroll over to columns F and G, can you see what
21 sort of action he was taking?

22 A. So in column 357, there is a search. It appears to be a
23 search term that was entered.

24 Q. And then below that where it says -- I think it says
25 Concorde search results and Concorde links. What does that

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1 show us?

2 A. So again, that's what I alluded to. The search term is
3 placed into the box, it generates links to certain subsets of
4 information, and you would click on those links or those
5 subsets of information to find out what they say.

6 So for instance, you enter a name in. It may show
7 vehicles, phone numbers, addresses located to that -- or
8 attributable to that person or any sort of narrative
9 information. You could click on that and then you could get
10 that information.

11 MS. DEININGER: And then if we scroll to the right, to
12 columns K through L, can we do it so we can -- is it possible
13 to do it so we can see both of them at the same time?

14 Thank you.

15 Q. What does this -- what does this show us that Costanzo was
16 accessing?

17 A. So based upon this section of the NADDIS audit, the name
18 Flores Moreno was searched. It looks like it might have been
19 searched again. And then what happened is again, if you look
20 in column K, NADDIS has retrieved addresses, vehicles, detailed
21 remarks, and identifying numbers for the name Flores Moreno.

22 Q. Okay. And Flores Moreno, that's one of the names that we
23 just looked at in the NADDIS summary chart in Government
24 Exhibit 704A, correct?

25 A. Correct.

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1 Q. And when we look under the information that was retrieved
2 under column K, one of the things that's mentioned here is
3 retrieve remarks. What does that refer to?

4 A. So retrieve remarks generally refers to any remarks that
5 are attributed to that subject that could be garnered from what
6 we call our DEA-6s or reports of investigation.

7 So for instance, if -- in this case, if Flores Moreno
8 was seen on surveillance at a certain time and location, that
9 might be noted in the report of investigation, and that would
10 be then placed into his remarks section -- that might be placed
11 into his remarks section in NADDIS.

12 Q. And then the next line below that says retrieve identifying
13 numbers. What does that mean?

14 A. Identifying numbers could be anything that's -- any sort of
15 numbers that are associated with you, including Social Security
16 number, date of birth, alien ID number, telephone numbers, any
17 identifiers or identifying numbers.

18 Q. Right actually above retrieve remarks it says detail. What
19 does that refer to?

20 A. Again, that is in reference to the search. That might be
21 another subset of information that is listed in NADDIS. Just
22 details.

23 Q. Would the type of information that John Costanzo is
24 retrieving here from NADDIS be public?

25 A. No.

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1 Q. Would this information be considered confidential?

2 A. Yes.

3 Q. Why?

4 A. Well, you have information there which, again, if that
5 becomes public, can jeopardize a DEA investigation. And if,
6 for instance, you have confidential sources who are providing
7 information against Flores Moreno, if that were to come out
8 that that information is attributable to them, you could place
9 their lives in jeopardy, as well as any DEA personnel
10 associated with the investigation.

11 MS. DEININGER: Ms. Pierre, you can take this down
12 now.

13 Q. And Inspector Miller, I wanted to turn to a different
14 topic. Generally speaking, does the DEA have standards
15 governing agent -- the conduct of agents?

16 A. Yes.

17 Q. And where are those standards memorialized?

18 A. They are memorialized in our various manuals. They are
19 memorialized in the personnel manual, the agent's manual, and
20 our standards of conduct.

21 Q. Are those standards of conduct part of the personnel
22 manual?

23 A. Yes, the standards of conduct are generally an outline for
24 ethical principles that guide each DEA personnel.

25 Q. And what is the difference generally between the personnel

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1 manual that contains the standards of conduct and the agent's
2 manual?

3 A. The agent's manual is substantially more expansive, and the
4 agent's manual provides us -- sort of goes on how to conduct
5 investigations, how to process evidence, how to do certain
6 things that are above the standards of conduct.

7 So the agent's manual is more a day-to-day how-to
8 guide to conduct -- to be a DEA agent, how to seize evidence,
9 how to process evidence; whereas the personnel manual, again,
10 is sort of encompassing the ethical standards in DEA.

11 MS. DEININGER: Ms. Pierre, if you can publish what's
12 in evidence as Government Exhibit 113A.

13 Q. Inspector Miller, can you see this?

14 A. Yes.

15 Q. What is this?

16 A. That is the section of the DEA personnel manual.

17 Q. And is this the entirety of the personnel manual or is this
18 just an excerpt of it?

19 A. An excerpt.

20 Q. At the top where it says 2735 Employee Responsibilities and
21 Conduct, there's a date, December 23rd, 2016. What does that
22 date refer to?

23 A. That date can refer to the date not so much when the entire
24 personnel manual was enacted, but if there were any changes or
25 policy additions made to the personnel manual or that section,

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1 they were added on December 23rd, 2016.

2 Q. So this version of this section of the personnel manual
3 would have been in effect from December 23rd, 2016 going
4 forward?

5 A. Yes.

6 Q. Until it was revised again?

7 A. Until any revisions were added or any changes were made,
8 yes.

9 Q. Do you know how frequently the standards of conduct are
10 generally updated?

11 A. It's not -- there's no timeline set. It's just basically
12 if the policy is revised, then the manual is then revised, and
13 that's reflected on the date. But there's no -- it's not
14 overhauled every year and changed every year. It's sporadic.

15 Q. Are DEA employees able to access the personnel manual?

16 A. Yes.

17 Q. How?

18 A. So what I alluded to earlier, that you have the DEA
19 intranet. And if you do -- if you search a certain section,
20 there's a subsection called "Manuals." And if you click on
21 "Manuals," it will list all the manuals governing policies and
22 procedures in DEA. There's the personnel manual, the agent's
23 manual, there's the laboratory manual. There's a bunch of
24 manuals on the list.

25 Q. You mentioned before that you are currently employed in the

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1 Office of Professional Responsibility for the DEA; correct?

2 A. That's correct.

3 Q. And that one of the Office of Professional Responsibility
4 responsibilities is to investigate violations of the standards
5 of conduct?

6 A. That's correct.

7 Q. How many people work in the Office of Professional
8 Responsibility?

9 A. So we have headquarters, which is in Arlington, Virginia.
10 There are two investigative groups attached to that. Then we
11 have offices in Plantation, Florida; Newark, New Jersey; in
12 Dallas, Texas; in Los Angeles or California. And generally,
13 those will consist of five inspectors such as myself, and then
14 one senior inspector. Those senior inspectors then report to
15 what we call an ADCI. And then that ADCI will report to the
16 deputy chief inspector.

17 Q. What is an ADCI?

18 A. It is -- I believe it's assistant deputy chief inspector.

19 Q. And so how many people in total would you estimate are
20 employed in the Office of Professional Responsibility at the
21 DEA?

22 A. Generally, based upon rotations, I mean, it can be anywhere
23 from 30 to 50.

24 Q. Can violations of the standards of conduct result in
25 disciplinary actions?

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1 A. Yes.

2 Q. What sort of disciplinary actions?

3 MR. MUKASEY: Objection.

4 THE COURT: Overruled.

5 A. Disciplinary actions are a result of our human resource
6 board. We at OPR only compile a report, so we don't hand down
7 discipline per se. But disciplinary actions can range anywhere
8 from a letter of caution to removal.

9 MS. DEININGER: Ms. Pierre, we can turn to page 2 of
10 Government Exhibit 113A now.

11 Q. Inspector Miller, do you see at the top where it says under
12 2735.11, General Provisions, Section A, it says: Purposes of
13 the standards of DEA standards of conduct.

14 Can you read point one for me and sub point E.

15 A. Sub point E? I'm sorry.

16 Q. Can you start with just reading the sentence following
17 point one.

18 A. Okay. To provide -- purpose of DEA's standards of conduct.
19 To provide guidance and framework in which DEA personnel may
20 embody and uphold DEA's core values.

21 Q. What does subsection E say?

22 A. Uncompromising, personal, professional, and institutional
23 integrity.

24 Q. And then if we can scroll down a little bit. And can you
25 read what is in here, points two through four under the

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1 general -- under the purposes.

2 A. Subsection two: To inform personnel of standards of
3 conduct expected of them as DEA employees and of the potential
4 penalties imposed for breaches of such standards.

5 Three. To set forth standards of behavior which will
6 protect and grow the reputation of the DEA with the American
7 public.

8 Four. To ensure DEA's law enforcement mission is not
9 impeded, restricted, or otherwise adversely influenced by
10 employee's misconduct.

11 Q. And now right under this it says there's a section B, scope
12 of the DEA's standards of conduct, and then a paragraph H. Can
13 you read just the first sentence in paragraph H?

14 A. Except where specifically excluded, the standards of
15 conduct apply to all employees, including task force officers
16 and special government employees as defined in 18 United States
17 Code, Section 202(a).

18 Q. Okay. I'd like to turn to page 3 now, and under the
19 section 2735.12, responsibilities. There's a section labeled B
20 supervisors. Can you read the intro to that and paragraph 1.

21 A. Supervisors. It is the responsibility of DEA's
22 supervisors, in addition to their duties and responsibilities
23 as employees of this agency, to:

24 Set and maintain high standards of personal conduct as
25 an example to employees. Supervisory personnel will be held to

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1 a higher standard of conduct given their status as managers.
2 Failure to act in response to a situation that the supervisor
3 was or should have been aware of may subject the supervisor to
4 disciplinary action or other appropriate measures.

5 Q. And generally, what does this provision provide?

6 A. This -- what does it provide?

7 Q. Or what is it?

8 A. Oh, this is -- in OPR parlance we refer to this section as
9 failure to supervise.

10 Q. Now, is a failure to ensure that DEA agents -- the
11 supervisor -- is supervisor also complying with standards of
12 conduct?

13 A. Yes.

14 Q. If we go to page 4, there is a section C, all DEA employees
15 that starts near the top. Can you read the sentence right
16 after it says -- up to the -- right after it says "All DEA
17 employees."

18 A. DEA personnel --

19 MR. MUKASEY: I'm going to object and again request
20 that at this point, as we dive in here, that instruction is
21 appropriate or a similar one is appropriate.

22 THE COURT: Well, why don't we complete this line of
23 questioning and we'll address it at the end or tomorrow
24 morning.

25 Q. Sorry. You can read starting in Section C, "All DEA

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1 employees."

2 A. DEA personnel as members of the law enforcement community
3 occupy positions of trust.

4 Q. And you can read up to the colon.

5 A. It is the responsibility of all DEA employees to:

6 Q. Now, just go into paragraph 4. What does it say? It is
7 the responsibility of DEA employees to, and then you can
8 continue reading.

9 A. Certify that they have read and understand the DEA
10 standards of conduct, as embodied in Section 2735 of the
11 personnel manual by signing the standards of conduct annual
12 employee certification form DEA-343.

13 Q. So what does that refer to?

14 A. Every year the DEA employees have to read and affirm that
15 they've read and understand the standards of conduct.

16 Q. And is that done at a specific time every year?

17 A. Usually more often than not it's done at the beginning or
18 end of the fiscal year. In the federal government we -- we're
19 in the fiscal -- we use the fiscal cycle, so that would -- the
20 end of the fiscal year is September 30th, the beginning is
21 October 1st. So usually around that time.

22 Q. This is something that all DEA personnel must do?

23 A. Yes.

24 Q. If we can now turn to page 9.

25 Okay. Here towards the middle of the page there's a

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1 section labeled "Use of Nonpublic Information."

2 Can you read that for me?

3 A. Use of nonpublic information. An employee shall not engage
4 in a financial transaction using nonpublic information nor
5 allow the improper use of nonpublic information to further
6 his/her own private interest or that of another, whether
7 through advice or recommendation, or by knowing unauthorized
8 disclosure. Nonpublic information includes DEA sensitive
9 information, for example, information that may compromise an
10 ongoing investigation or prosecution, provide an unfair
11 advantage to a company competing for a DOJ/DEA contract, or
12 reveal the identities of confidential sources or DEA special
13 agents or task force officers, as well as the items identified
14 in 5 CFR Section 2635.703.

15 Q. Can you give an example of a violation of this standard of
16 conduct?

17 A. Yes. If you were to, let's say, provide information to
18 your neighbor who is not a DEA employee or doesn't have the
19 appropriate clearances about an investigation that you're
20 working and provide nonpublic information. So for instance,
21 you were to say, Hey, on Thursday we have a sealed indictment
22 and I'm going to arrest this person. That information is not
23 public, and sharing that information with a nonDEA employee
24 would be a violation of this section.

25 Q. Would giving information from NADDIS to a private

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1 investigator in exchange for money be a violation of this
2 policy?

3 MR. MUKASEY: Objection.

4 THE COURT: Overruled.

5 A. Yes.

6 Q. Would giving information from NADDIS to a defense lawyer in
7 exchange for money be a violation of this policy?

8 A. Yes.

9 MS. DEININGER: All right. Ms. Pierre, we can now --
10 actually, we can just stay on this page.

11 Q. I want to look at the next section, 2735.15, gifts from
12 outside or nonfederal sources.

13 Inspector Miller, if you can just start at Section A
14 and read through the end of the page.

15 A. Section A. Gift includes any gratuity, favor --

16 Q. Sorry. We can actually start at paragraph -- upper case A.

17 A. Capital A. Okay.

18 An employee shall not accept a gift from a prohibited
19 source. A DEA employee also shall not accept a gift given
20 because of his or her official position. For the purposes of
21 this section, the following definitions apply: Gift includes
22 any gratuity, favor, discount, entertainment, hospitality,
23 loan, forbearance, or other item having monetary value
24 including, but not limited to, gifts of training,
25 transportation, local travel, lodging, and meals.

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1 MS. DEININGER: If we scroll to the next page, Ms.
2 Pierre.

3 THE COURT: It's 5 o'clock, so I want to --

4 MS. DEININGER: That's fine.

5 THE COURT: -- finish.

6 If you want to finish this one point, you can.

7 MS. DEININGER: Why don't we finish this one rule.

8 THE COURT: Okay.

9 MS. DEININGER: Okay.

10 Ms. Pierre, if you can scroll down to the next page.

11 Q. And I want to -- under paragraph B here, I just want to
12 read B1 and B4.

13 A. "Prohibited source" means any person who is seeking
14 official action by the employee's agency, and has interests
15 that may be substantially affected by the performance or
16 nonperformance of the employee's official duties.

17 MS. DEININGER: And then one more in this. If we
18 scroll down to the bottom of the page, paragraph C here.

19 Q. Inspector Miller, if I can just ask you to read paragraph C
20 to the bottom of the page.

21 A. Even if an exception identified in paragraph B above or 5
22 CFR Section 2635.204 applies to an employee, an employee shall
23 not accept a gift if: It is given in return for being
24 influenced in the performance of an official act; the employee
25 solicits or coerces the offering of a gift; the employee

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1 accepts gifts from any source on a basis so frequently that a
2 reasonable person would be led to believe the employee is using
3 his or her public office for private gain.

4 MS. DEININGER: That was all I wanted to cover in this
5 section, so it's a good time to break.

6 THE COURT: Okay. Thanks.

7 Folks, we're going to break for today. We'll resume
8 tomorrow morning. We'll have coffee and bagels for you in the
9 morning. So please try to arrive between 9 and 9:15, and we'll
10 try to start at 9:30 promptly.

11 Please remember not to do any research or discussion
12 about the case. Please leave your notepads on your chairs
13 closed and have a good night, everybody. See you tomorrow
14 morning.

15 (Jury not present)

16 THE COURT: You may step down.

17 If you'd step out for a minute. Thank you.

18 (Witness not present)

19 THE COURT: You all may be seated.

20 I wanted to see if you all wanted to address any
21 issues before we break.

22 MR. SWETT: Your Honor, one small thing from earlier
23 today. When I read Government Exhibit S2 into the record, I
24 read the final paragraph which admitted 302 through 303A, 310
25 and 311. And then I stated that that might be a typo and that

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1 301 should also be included. I was mistaken there. That was
2 not a typo. So it was the government's intention only to
3 introduce 302 through 303A, 310 and 311, as reflected in the
4 stipulation.

5 THE COURT: So the one that is not admitted is which
6 one?

7 MR. SWETT: It's Government Exhibit 301. It is
8 authenticated under this, but it's not admitted.

9 THE COURT: It's not yet admitted. Okay.

10 MR. SWETT: Okay.

11 THE COURT: Thank you.

12 And I'm open to the idea of some limiting instruction
13 about sort of flagging for the jury that there's a difference
14 between DEA policies and standards of conduct on the one hand
15 and the elements of the crime. I wasn't comfortable with the
16 proposed instruction that defense counsel provided because I
17 thought it might be a little confusing.

18 MR. MUKASEY: Judge, I have a thought. I'm just
19 picking up on that to try to wrap it up.

20 Perhaps we can submit an instruction tonight/tomorrow
21 morning that simply suggests that they've heard testimony
22 regarding DEA policies. But something along the lines of they
23 should wait till the end of the case to understand all the
24 instructions that will play into the elements of the charges.
25 Something more generic like that, if that would suit the Court.

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1 MR. SWETT: I think we're happy to review language
2 that's proposed and we can discuss tomorrow morning.

3 THE COURT: Why don't we try to discuss something at
4 9:15. If you could try to agree something along those lines, I
5 think that would be fine, something that flags the point you
6 just made. I will explain in detail later the elements of the
7 crime. Pointing out that by itself a violation of a DEA policy
8 does not establish the crime; it's not sufficient to establish
9 the crime.

10 MR. MUKASEY: That's fine.

11 THE COURT: If you guys could confer and we'll craft
12 something. Could you do that?

13 MR. SWETT: We'll certainly -- yes, absolutely, your
14 Honor.

15 THE COURT: All right. Great.

16 MR. GAINOR: Your Honor, I'm sorry to interrupt.
17 There is one other matter when the Court moves off of this that
18 we wanted to address.

19 THE COURT: Okay.

20 MR. GAINOR: It does deal with Mr. Hernandez Villazon.
21 So I don't know from the government whether or not that witness
22 is taking the stand tomorrow; there was some mention that he
23 might. But I think that there is some unfinished business with
24 regard to the production of materials related to the blackball
25 memo from DEA.

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1 As the Court knows, we have gotten a heavily redacted
2 blackball memo from the DEA, but there was some issues with
3 regard to accompanying DEA-6s that were prepared apparently by
4 Ulysses Delgado, which was the controlling agent. And I had
5 been in contact with the government.

6 I don't want to misspeak, but it's my understanding
7 that those DEA-6s will not be turned over to the defense, but
8 there was some suggestion – and I'm sure Mr. Swett would
9 correct me if I'm wrong – that the DEA would be in a position
10 to turn them over for an *in camera* review by the Court.

11 We'd be asking for such a review.

12 THE COURT: Just to back up for a second, did you say
13 a redacted version of the report has been produced that's
14 different from the two or three-page summary?

15 MR. SWETT: Yes, your Honor.

16 After the Court asked us to confer with DEA, we asked
17 if they would produce it, and they produced a version that
18 redacted out information about other sources.

19 (Continued on next page)
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21
22
23
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1 THE COURT: Oh, but it does have sort of all the
2 relevant information about this witness.

3 MR. SWETT: I think it has -- I think by redacting out
4 information of other sources, it redacts out some of the
5 allegations that he revealed who that source was, but those
6 allegations are also summarized in an F.B.I. memo which has
7 been turned over.

8 MR. GAINOR: Well, we don't know exactly, so we would
9 be asking for -- if the understanding is that the DEA would
10 turn over that unredacted memo and the accompanying DEA 6s for
11 *in camera* review, we would be asking for that.

12 MR. SWETT: The DEA -- so we have spoken to DEA
13 counsel on this. Again, we don't have this document. Their
14 view is that this is not a document they want to turn over and
15 that they have complied with discovery requests as the
16 information contained in the form—and it's actually called a
17 512D—has been turned over. So the facts have been provided,
18 and they do not want to turn over the document. And they have
19 stated their position that if the Court is inclined to order
20 production of this document or has further questions about this
21 document, they would like the Court to review it *in cameras* to
22 determine whether the DEA has complied with its discovery
23 obligations.

24 THE COURT: Discovery obligation being the subpoena.

25 MR. SWETT: Correct.

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1 THE COURT: Okay. So when you say the document,
2 again, you are talking about the unredacted version of it, of
3 the report?

4 MR. SWETT: Well, I think what I am talking about is
5 this form that the agent filled out that they don't have, but I
6 think we can probably throw the unredacted version of the
7 deactivation memo on to the pile as well.

8 THE COURT: Okay. So could you provide that to me *in*
9 *camera*, for *in cameras* review?

10 MS. DEININGER: I think we can ask the DEA to provide
11 it because we currently don't have it and we don't expect them
12 to produce it directly to us. But we can submit that request
13 to them.

14 THE COURT: Okay.

15 MR. MUKASEY: Judge, I'm informed that an additional
16 reason for needing this, rather than just sort of trying to pry
17 every last piece of paper we can get, is that there are varying
18 renditions or varying stories from the cooperating witness
19 about why he was deactivated which we think go to his
20 credibility.

21 THE COURT: And those different stories are reflected
22 in these documents or not?

23 MR. MUKASEY: In -- well, we don't know what's
24 reflected in these documents, but we certainly know various
25 versions of his excuses.

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1 THE COURT: Okay. So what does the government have
2 that you have not provided to the defense? Anything?

3 MS. DEININGER: We don't --

4 MR. SWETT: When you say "government," do you mean
5 prosecution team?

6 THE COURT: Yes.

7 MR. SWETT: Nothing.

8 THE COURT: So you have only seen the redacted
9 version, as well.

10 MR. SWETT: We have seen the unredacted version and
11 then we marked it for production. The DEA then produced a
12 letter summarizing the impeachment material, and then, after we
13 requested, they produced a redacted version.

14 I have told defense counsel and at this point, having
15 been a middleman on this, I'm happy to tell the Court, I think
16 the F.B.I. memo that they have in its unredacted form is the
17 most fulsome version of events here. That's my best
18 recollection.

19 But we are happy for the Court to review the documents
20 *in camera* and determine whether there is something in there
21 that they are entitled to, facts that they haven't gotten yet
22 about the deactivation.

23 THE COURT: Okay.

24 MS. DEININGER: And just to be clear, when we say we
25 have reviewed the unredacted memo, it was only when Mr. Swett

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1 took the trip down to Florida and was able to review it at the
2 DEA's offices. We have never otherwise had it in our
3 possession.

4 THE COURT: Right. Understood.

5 Explain to me the difference between the report,
6 redacted and unredacted version on the one hand and these other
7 6s. What are those? Those are DEA investigation memos?

8 MR. SWETT: Well, the DEA investigation memos are
9 called 6s, but our understanding is that this additional
10 document that they are asking for is not a 6. It is called a
11 512D, and it is some sort of deactivation form that they have.

12 THE COURT: That DEA has.

13 MR. SWETT: Correct.

14 There are -- we produced a number of 6s related to the
15 cooperator. There were quarterly reports that kind of
16 summarized his ongoing cooperation at a high level without
17 getting into the specifics, and we produced all of those, and
18 the DEA, I think, in general has no problem turning over the
19 6s, but this 512D they have an issue providing.

20 MR. GAINOR: But the 512D references a DEA 6, just to
21 be clear, so . . .

22 THE COURT: Okay. Do you have the exhibit number of
23 the F.B.I. report that you referred to?

24 MR. SWETT: It would be in the 3500 materials and I
25 think I would need to go back and check because there are about

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1 250 documents in the cooperator's 3500.

2 THE COURT: So if you could communicate the request to
3 the DEA, I'm happy to review anything *in camera*. I'm not sure
4 as a formal matter how they would get that to me. I don't know
5 if they would be comfortable e-mailing it. They might not be.
6 If they could e-mail it with a password or something like that,
7 I would be happy to look at the full report and the 512D if
8 they are up for that.

9 MR. SWETT: That's fine, your Honor. I think what I
10 will do, we can send an e-mail to chambers copying defense
11 counsel, copying DEA counsel, and explain the situation.

12 THE COURT: Okay.

13 MR. SWETT: That way they will be able to reach out to
14 the Court directly.

15 THE COURT: All right.

16 MS. DONNER: There was a motion to compel that was
17 filed and it should provide your Honor all the information that
18 you need to determine what we are seeking --

19 THE COURT: Okay.

20 MS. DONNER: -- including the subpoena.

21 THE COURT: Okay. All right. Thanks.

22 Anything else?

23 MR. ANDREWS: One last matter, your Honor. You asked
24 for a draft limiting instruction with regard to the 2015
25 messages. We sent a draft of the government's proposal to

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1 defense counsel on Tuesday morning. We have yet to receive the
2 defense's edits or counterproposal. We anticipate that Special
3 Agent Miller is going to be reading those messages -- sorry, it
4 will be Analyst Maj will be reading those tomorrow. So if the
5 defense has a counterproposal, now would be the time to send it
6 over to us.

7 MR. MUKASEY: Well, we will get to it as soon as we
8 can. We are kind of drinking from the fire hose, getting 3500
9 material while a witness is on the stand virtually or at 2 or 3
10 in the morning. So we are doing the best we can.

11 THE COURT: Okay. I'm trying to remember. Yes, I do
12 remember the proposed language that you provided a couple of
13 days ago which was about you cannot consider it for propensity,
14 basically. It didn't say that so much.

15 MR. ANDREWS: You asked for the parties to confer
16 about proposed language, and we had said that the parties will
17 confer. I think it's probably more fruitful for the defense to
18 confer with us within a reasonable amount of time to avoid sort
19 of the limiting instruction complication we ran into today,
20 understanding that the defense is busy but, you know, it's an
21 important instruction.

22 THE COURT: Yeah, if you all could confer, I would
23 like to have an agreement or proposals from each side before
24 the witness gets on the stand.

25 MR. MUKASEY: As soon as we review it we will get it

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1 to Mr. Andrews.

2 THE COURT: Okay. Great.

3 All right. Have a good night, everybody.

4 COUNSEL: Thank you, your Honor.

5 THE COURT: We are adjourned.

6 (Adjourned to Friday, October 27, 2023, at 9:15 a.m.)

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